S. HRG. 101-961

NOMINATION OF CONSTANCE J. HORNER

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

THE NOMINATION OF CONSTANCE J. HORNER, UNDER SECRETARY OF HEALTH AND HUMAN SERVICES, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL CONSUMER COOPERATIVE BANK FOR A TERM OF 3 YEARS, VICE EWEN M. WILSON

JULY 27, 1990

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE

34-313 WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S241-11

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NOMINATION OF CONSTANCE J. HORNER, UNDER SECRETARY OF HEALTH AND HUMAN SERVICES, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL CONSUMER COOPERATIVE BANK FOR A TERM OF 3 YEARS, VICE EWEN M. WILSON

FRIDAY, JULY 27, 1990

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10:15 a.m. in room SD-538 of the Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (chairman of the committee) presiding.

Present: Senators Riegle, Graham, Dixon, and Wirth.

OPENING STATEMENT OF CHAIRMAN RIEGLE

The CHAIRMAN. The committee will come to order.

Let me welcome our nomination witness this morning and others in attendance. Let me indicate the reason we are starting late this morning. The Senate was in session last night until about 1:00 a.m., and at that very late hour, or early hour this morning actually, it was determined that we would have two votes this morning starting at 10:00 o'clock, and they have run long. So we have been delayed in starting, and that is the reason for the delay.

I want to further say that Senator Garn expresses his regrets at being unable to be here. He has to attend to a markup in the Senate Appropriations Committee's Subcommittee that he is responsible for on the Minority side. So he must be there and asks that I indicate why he is not present here.

I am going to make a brief opening comment, and then I am going to call on Senator Graham for any opening comments he wishes to make.

This morning the Banking Committee will consider the administration's nomination of Constance Horner to be a Director of the National Consumer Cooperative Bank. Ms. Horner is an educator by training and has been involved in public policymaking positions since the inception of the Reagan administration.

Ms. Horner currently serves as Under Secretary of the Department of Health and Human Services. She would continue to serve in this position if she is confirmed as a Bank Director. Prior to assuming this position in August 1989, Ms. Horner held a number of positions in the Reagan administration, including Director of the

Office of Personnel Management, and Associate Director for Economics and Government of the Office of Management and Budget.

Ms. Horner, you and I know each other from my Chairmanship of the Health Subcommittee of the Finance Committee where we are engaged, with others, in trying to find some new answers to some of our pressing problems in terms of the health care system in this country, and for access by all citizens to that system.

I want to welcome you to the committee today. A little bit later, of course, I will administer the oath before we get into the comments and questions that you might make, but let me call on Senator Graham.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. I have no opening statements. I look forward to hearing from Ms. Horner.

The CHAIRMAN. Before we begin, I have a statement from Senator Dixon for the record.

STATEMENT OF SENATOR ALAN J. DIXON

I am pleased to be here at this morning's hearing on the nomination of Constance J. Horner to be a member of the Board of Directors of the National Cooperative Bank. I note that Ms. Horner received her masters degree from the University of Chicago, so I feel confident about her educational credentials.

I am a great believer in the power of the free market. I am concerned, however, that Ms. Horner may have subscribed too fully to a free market approach. The free market may work—and work well in most situations—but not when Federal Deposit Insurance is involved, not when the taxpayers are backstopping all the down-side risks.

According to testimony before this committee the Office of Management and Budget in 1985 and 1986 rejected the requests of the Federal Home Loan Bank Board for additional supervisory personnel. The reason given, according to Senate testimony, was that additional supervisors violated the adminstration's deregulatory philosophy. Senate testimony named Constance Horner as one of the key people at OMB who nixed the Bank Board's request.

I would like to know whether Ms. Horner still subscribes to the view that Government guarantees are appropriate even if strong supervision is not in place. The National Cooperative Bank owes the Federal Treasury roughly $200 million, participates in Federal deposit insurance, and is supervised by the Farm Credit Administration. I want to be assured that Ms. Horner now believes that the strong Government supervision is necessary whenever deposit insurance or other Government guarantees are in place.

The CHAIRMAN. I might as well administer the oath now. Would you stand and raise your right hand.

[Witness sworn.]

We would welcome any opening comments you want to make at this time, and any introductions that you want to make of anyone who is here with you this morning.

STATEMENT OF CONSTANCE J. HORNER, UNDER SECRETARY OF HEALTH AND HUMAN SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Ms. HORNER. Thank you very much, Mr. Chairman, and Members of the Committee. I am honored to appear before you today as the President's nominee to serve as a Director of the National Cooperative Bank. I have some very brief comments to make, and I will be happy to respond to any questions you may have.

I view the appointment as conferring significant responsibilities. First and foremost, NCB is a corporation chartered by an Act of

Congress and, while it is a private corporation, a majority of whose directors are elected by its shareholders, it is indebted to the Treasury for $184.2 million. Repayment of this debt requires responsible, prudent operations directed by the Board with appropriate attention to all those matters which make financial companies successful.

I believe that my experience as a Government executive, as Director of VISTA, at OMB, at OPM, and now as Under Secretary of Health and Human Services, gives me the necessary experience and expertise to participate as a Board member in meeting this responsibility.

If confirmed, I look forward to working with a board of directors which I believe consistently has taken this responsibility seriously; but NCB is more than a private financial services company. While its charter mandates that it maintain rigorous credit standards, it also mandates that it deal in the specialized area of cooperative finance. Its social purpose, which I strongly endorse, is to promote cooperative developments to address people's needs in housing, employee and consumer ownership, and health care and other related areas, with special emphasis on support for cooperatives with low-income members or serving low-income areas.

One of its principal markets is managed health care, and more specifically health maintenance organizations, rural community health clinics, and various shared service organizations. These are all areas of enormous need and rapid change, and I am hopeful that I can contribute to policy-setting in this arena that will provide benefits to both NCB and to the community at large.

As a member of the Board of Directors of NCB, I would expect to participate fully and forcefully with the other Board members in providing the necessary direction to management, and evaluation of management. I understand, Mr. Chairman, that the Bank, and therefore its members, have benefited from a very open and positive relationship with you and other members of the committee, and your staff.

If confirmed, I am looking forward to trying to contribute to that continuing relationship.

That is all I have to say. If you would like, I would be happy to respond to any questions you may have.

The CHAIRMAN. Very good.

First of all, as has been noted here, the National Consumer Cooperative Bank is an institution that is approaching a half-billion dollars in assets. As you noted in your testimony, the bank owes the U.S. Treasury approximately $184 million, which is a very substantial fact. I think the fiduciary responsibilities of a director of a financial institution of this size and with these obligations are very substantial ones, and I would like you to give me as complete an answer as you can as to what you see as your own personal and professional qualifications for such a position.

Also, I would like you to indicate to me how you feel you are going to have the time necessary to devote to these responsibilities, in addition to the other very major tasks that you also have to carry out.

Ms. HORNER. Yes, Mr. Chairman. I think my qualifications include a history of increasing management experience and responsi-

bility beginning with 3½ years of management and budget experience as Director of VISTA, the domestic antipoverty program and then as Associate Director of OMB; and then as a Presidential nominee with Senate confirmation to head a 5000-person agency administering retirement, health, and personnel issues for the 2 million member Federal work force. This was followed by a Presidential nomination and Senate confirmation to my current position as Under Secretary of Health and Human Services where we administer a very large budget and a very sizeable work force in an arena of extremely complex policy, budget, operational, and management issues.

I think these experiences have given me the kind of maturity of judgment and experience in decisionmaking in a complex policy and financial arena that would allow me to be helpful to decisionmaking on the Board.

As far as where I would get the time, over the course of the last 10 years I have had a number of different appointments requiring considerable learning, new learning. Each time, I have had to devote a lot of time to continued learning. That will be true again. I plan to devote time, if confirmed, to the activities of the Bank.

As I am sure you know from your significant position in the health arena on your Health subcommittee, that is a complex responsibility, a complex area of understanding, and I hope I can bring some of that knowledge that I already have to bear upon the deliberations of the Bank.

I also perhaps ought to add that my two children have finally gone away from home, and that liberates enormous amounts of time which I would be happy to devote to the activities of the Bank.

The CHAIRMAN. Can you also review for me your training, prior to coming into Government?

Ms. HORNER. Yes. Prior to coming into Government, I received a Bachelor's Degree from the University of Pennsylvania, and a Master's Degree from the University of Chicago. Subsequent to that, I spent 12 years teaching here and abroad, and also doing some writing on public policy issues.

The CHAIRMAN. In what subject areas?

Ms. HORNER. The areas of English literature and composition in my earlier teaching experience; and then subsequently in writing on education issues, various social policy issues, and so on. My introduction to the economic realm, and specifically to the cooperatives, came when I was Director of VISTA which had a fair number of cooperative undertakings.

The CHAIRMAN. Many individuals have stated in a variety of forums that the OMB at the time that you were there in a significant role played an important part in limiting the examination and supervision staff of the Federal Home Loan Bank Board in the early and mid-1980's. It was a time when, both then and since, it has been obvious that more effective examination and supervision was needed and could have made an important difference.

There are several instances of that that I am going to cite here in a minute, but I want to lead off with this one. One individual who made an important reference to that with specific attention to yourself was Ed Gray, who was of course a former Board Chairman

of the Federal Home Loan Bank Board. He was before this committee in August of 1988 and was seated literally where you are seated at this moment.

I want to read you an excerpt from the transcript of his testimony. I asked this question to him that day in committee. I am reading from the committee record. I said:

I note in your statement, Mr. Gray, you say on page 7, "Several high-ranking officials of OMB told me personally in 1985 and 1986 that we were violating the deregulatory policy of the administration by asking for substantial increases in staff at the Bank Board."

That was a quote where I was reading back, again, from his testimony on page 7.

So I then asked him, I said:

Who were those officials?

Mr. Gray responded,

Connie Horner at OMB.

Now we all know a lot about that problem today in terms of the size and the magnitude of the problem. I am going to ask you, first of all, I would like a complete explanation from you as to what this reference means.

Ms. HORNER. Mr. Chairman, you may recall, I think it was last fall, my successor as Associate Director Carol Crawford testified before you and members of this committee to precisely this issue. I had assumed it was a fully discussed issue, but I would be very happy to go through it right now.

The CHAIRMAN. He did not mention her name. He mentioned your name, and you are here, so I would like to hear it directly from you, and I want the full story.

Ms. HORNER. The question of staffing is this: Did OMB refuse to provide the necessary staffing increases?

The Bank Board, during the years of my tenure, as well as before and after, was below its authorized ceiling. For example, it was below the ceiling that had already been set. It already had authority to hire more, but for several years it did not. It did not hire up even to its authorized ceiling.

The Bank Board asked OMB staff for additional examiners, but the staff felt that the request was not justified since the Bank Board had not been able to hire up to the ceiling that it already had. I discussed this matter with Mr. Gray and I concurred with the staff in this regard.

I thought that was the end of the matter because Mr. Gray did not avail himself of the opportunity to appeal to the Budget Review Board to get a different outcome. That Review Board was something available to all department and agency heads. Many of them availed themselves of it, and many of them were very successful in getting more personnel, or larger budgets as a result of that appeal.

The CHAIRMAN. Am I right in understanding that at that time you were the official at OMB that would have been responsible for Bank Board examination and supervision resources?

Ms. HORNER. There were several examiners who would make decisions. Then, if there was any further need for evaluation, it would come to me; yes.

The CHAIRMAN. I presume that is why you and Mr. Gray had, was it more than one conversation? Or a conversation?

Ms. HORNER. I remember two, possibly three conversations during the course of my tenure with him.

The CHAIRMAN. Were they all on this subject?

Ms. HORNER. No.

The CHAIRMAN. I would like you to reconstruct, as best you can, what went on in the conversation where he was asking you for more staff resources and you were concluding that they were not needed.

Ms. HORNER. It is 6 to 7 years ago, but as best I can remember I pointed out to him that I believed his problem in not being able to have staff was not one of OMB authorized ceilings since he had not reached his ceiling, but was one of pay. He was unable to pay his employees enough money, and other governmental organizations not subject to Civil Service pay limits which were established not at OMB but elsewhere by statute, were hiring away his examiners. Also, the private sector was hiring away his examiners.

At that time, I urged him to seek a waiver available to him from the Office of Personnel Management. To my knowledge, he never did. That would have permitted him to increase his pay substantially.

The CHAIRMAN. What did he ask you for when he came to see you? I take it that he came to your office?

Ms. HORNER. I think we must have spoken on the phone. I do not remember his coming to my office. I would not say it is impossible, but I do not remember it.

The CHAIRMAN. What would he have asked of you? What was his request?

Ms. HORNER. His request was to increase the ceiling. That is, to make a determination that he would be permitted to hire to a higher level.

The CHAIRMAN. I want to pursue this, but let me ask you why would the OMB at that time care so much about staffing limits when it was not the taxpayer funds directly but industry funds that would be used to pay the salary of these people?

Ms. HORNER. These were Federal employees, and part of the Federal work force. I think the reason was that we had a Presidential policy to limit expansion in the size of the Federal work force broadly, and that it was incumbent upon an agency head to justify any increases. This would have been for every conceivable Federal department and agency. And when the Chairman of the Bank Board requested additional staff, a higher staff ceiling, the OMB staff quite correctly implemented Presidential policy, given that they did not feel that there had been a justification for an increase. So they adhered to the policy to restrict increases.

The CHAIRMAN. Do you recall what he asked for in the increase?

Ms. HORNER. No, I do not, Mr. Chairman. I do have information on the degree to which he was beneath authorized ceilings, if that would be of interest to you, because my successor provided me a letter she had I think provided this committee which contained

that information. But I do not have the figures on what the actual request was.

The CHAIRMAN. But you do recall that he contacted you and said that he needed more resources and asked specifically to have an increase? Is that correct?

Ms. HORNER. I believe he wrote me a letter making that request, and I think his chief of staff contacted me.

The CHAIRMAN. Do you have the letters?

Ms. HORNER. I do not, no.

The CHAIRMAN. Can you find them?

Ms. HORNER. I do not know if they are available in the OMB's records. I imagine I could.

The CHAIRMAN. So the letter would have been a follow-up to the phone call, what you think was a phone call? So he contacted you, I take it, both by phone and by letter?

Ms. HORNER. Over a period of a little over 2 years, I remember two, possibly three discussions, two in person and one may have been by phone but I cannot pin down which contact occurred at which meeting.

The CHAIRMAN. When you would have met in person, would you have gone to see him, or would he have come to see you? Where would you meet?

Ms. HORNER. On the first occasion, he invited me to his office for a discussion and I went. Then on the second occasion, I invited him to have lunch with me at the White House Mess.

The CHAIRMAN. This is important testimony, and I want to make sure it is accurate and you are satisfied with the accuracy of it. So he requested additional resources from you both directly and in a conversation either in person or over the phone, and he likewise sent you a letter to that effect. You do not have the letter now, as far as you know.

Ms. HORNER. I do not have it in my personal possession. I imagine it would be available in the files. It was a standard letter.

The CHAIRMAN. In your sense of what the letter would have said, it would have been a formal request for an increase in staff resources?

Ms. HORNER. Yes.

The CHAIRMAN. Do you have any recollection if it was a letter of a paragraph or two?

Ms. HORNER. I do not recall the letter. It would have been surprising if he had not written such a letter, since it was the routine thing for an agency head to do when seeking additional resources.

The CHAIRMAN. Now you were the person in charge, and you listened to what he had to say, and you read his letter and you decided that you would not approve an increase? As you point out, he had the right to make an appeal and seek a waiver. I want to talk about your decision.

I would like you to explain a little more fully your view as to why, after he pressed you on the issue, as he clearly did, in person and in writing, that you concluded—your own judgment being at odds with his—that you would not provide any additional resources.

Ms. HORNER. Well in 1983 he was under his ceiling by 23 staff years, and in 1984 by 68 staff years, and in 1985 by 159 staff years, and in 1986 by 129 staff years.

Now I left OMB in 1985, but it struck me that there was simply no justification for the increase; that this was a long-time pattern, and that he had real problems of pay, possibly organization, a problem with recruitment, and a problem with retention. I urged him to seek answers in places where I thought he could find answers to those problems.

The CHAIRMAN. What was his response to your arguments?

Ms. HORNER. I received none.

The CHAIRMAN. When you met in person? Just a blank stare?

Ms. HORNER. As best I can remember, simply persistence in the original requested course of action.

The CHAIRMAN. He obviously felt that if he had the resources he could put them to use and get people. Is that a fair summary of his arguments?

Ms. HORNER. I cannot attribute motivation to him, Mr. Chairman. That certainly would be a correct inference to make.

The CHAIRMAN. I am not asking you, and would not ask you to try to draw any conclusions about his motivations. I am trying to—I was not there and you were and I am trying to establish what was said and how the judgment was reached, because you had an opportunity to say, yes, or no, and you said, no.

Ms. HORNER. Mr. Chairman, usually when an agency head asks for additional resources, I assume it is because the agency head thinks that additional resources would be helpful and useful. It is not always the case that the agency head's judgment is correct, and we have a system of negotiation and a system in which a variety of institutions within Government participate in the decisions.

The CHAIRMAN. I want to put into the record here, you have obviously anticipated the questioning, and properly so, and I appreciate the fact that you did and have some material with you. In anticipating that and getting these materials, did the thought cross your mind of getting the letter, as well, and asking for that?

Ms. HORNER. No, it did not, Mr. Chairman. I did not ask for anything. It is just that when I made a phone call to my successor, she sent me the information I have provided.

The CHAIRMAN. I would like to—I think we need to take a look at the letter, and I would like you to help us locate it and we will make it a part of the record.

Let me just make a couple of other points with respect to this, and then I will yield to Senator Graham.

The House Committee on Government Operations issued a report in October 1988, so that would be about 2 years ago, less than 2 years ago. They said this in that report. They said:

> The OMB's repeated refusal to consider the requests of the Federal Home Loan Bank Board for greater resources during the first half of the decade had a severe impact on the Board's examiner and enforcement capabilities, and has significantly contributed to many of the problems now facing the industry—"the industry" being the savings and loan industry.

I think that is a significant finding by a House Committee back in 1988 when they issued that report.

Then I also find that Mr. William Black, who was then Deputy Director of FSLIC, told the House Committee on Government Operations on June 13, 1987, that OMB's short-sightedness in refusing to let the Bank Board out from under the Classification Act salary restrictions was costing the FSLIC—and I will just quote Mr. Black at that time in his testimony, and his quote is:

> Literally billions of dollars to save a couple of hundred thousand, maybe a million, in salaries.

He obviously felt very strongly about it, and he was a party at interest. So that I am sure is reflected in his view. But on that issue—I will come back to this on this issue of any refusal by the OMB to let the Bank Board out from under Classification Act salary restrictions.

Do you want to say something about it now?

Ms. HORNER. Please, Mr. Chairman. OMB does not have the authority to do that, and never has had the authority to do that. I think that Mr. Black might have looked elsewhere, if he had known this at the time he said that. Salary restrictions are set in law, and they are administered by the Office of Personnel Management. OMB had only staffing ceiling levels. That was OMB's responsibility.

I think Mr. Black may perhaps have confused OMB and OPM in this instance, and I very much regret, frankly, as I am discovering now, that many people have been saying this about OMB for some time and it is based on a confusion about authority.

The CHAIRMAN. In any case, you were not persuaded by Mr. Gray's argument.

Ms. HORNER. No. I concurred with my staff that additional personnel were not justified.

The CHAIRMAN. So he asked for the resources. You took a look at it and decided that they were not justified and did not accede to his request.

Just one other item here on this. Are you aware that the Bank Board went ahead and pushed 105 examination staff personnel down into the Federal Home Loan Banks in 1985? And, after they did that, in order to try to increase the number of personnel who were out there doing these supervisory examinations, that they then hired, as I understand it, hundreds of additional examiners? Are you aware of that?

Ms. HORNER. Yes, I am.

The CHAIRMAN. What is your reaction to that? Was that the way we should have done that, do you think?

Ms. HORNER. This occurred after my tenure. I believe the decision was made at the very end of my tenure, but it occurred afterwards. Frankly, I have no capacity to make an assessment of the outcome of that decision.

The CHAIRMAN. Is there not some logic to the notion that after coming and asking you for additional resources and getting turned down, that this was the kind of step they then took to solve their problem?

Ms. HORNER. The step certainly made it possible for the Bank Board to pay—for the banks to pay for larger salaries and attract more qualified people, and to that extent I am sure that it was

very helpful. It is just that it was not within OMB's capacity to offer the kind of assistance for which the Bank Board was looking.

The CHAIRMAN. Senator Graham.

Senator GRAHAM. Mr. Chairman, thank you very much.

Realizing that we have a vote starting soon, I would like to pursue three questions, one of which is a follow-up on the question that you have been asking.

The House Committee on Government Operations in November 1987 issued a report based on a series of hearings that that committee had been having. On page 6 of the report, there is a paragraph which includes your name. To summarize the paragraph, it states:

The key to the other agencies' hiring flexibility is the exemption from the Classification Act, an exemption in the NAPA legislation. Although they generally follow the salary range in the Classification Act, the Federal Reserve Board, the FDIC, and the Office of the Comptroller of the Currency have agreed to the fixed compensation of their employees to provide salary enhancements and benefit programs that they deem appropriate. The Bank Board, on the other hand, is restricted from any such independence due to OPM's interpretation that this agency is subject to the provisions of the Classification Act. This determination—i.e., that the Bank Board was subject to the restrictions of the Classification Act—was reaffirmed on May 30, 1986, when OPM Director Constance Horner again denied the Bank Board's request for an exemption from the Act.

Is that a correct statement?

Ms. HORNER. I am totally unaware of any such denial. I am totally unaware even of any such approach to OPM with a request. It is something with which I am entirely unacquainted.

Senator GRAHAM. I would like to ask the staff if they would review the basis upon which the House Committee reached the conclusion that on May 30, 1986, there was such a denial.

The CHAIRMAN. Would you just yield on that point? Would that be the kind of thing that you would remember? In other words, are you certain in your mind that that would not have come up? Or are you saying you do not remember now and it might have come up?

Ms. HORNER. I think, had I been personally involved in such a decision, I would likely have remembered it because of the previous history on the issue. It is possible that a department in my organization would entertain such a request and deny it, as many requests are entertained and denied or granted without the agency head's being involved in it. That is conceivable. But frankly I have never heard of this issue.

The CHAIRMAN. Excuse me. Thank you, Senator.

Senator GRAHAM. Going back to your period with the Office of Management and Budget, and focusing on the middle word in that title, "management," since that is the nature of the position that you were about to assume, what did you consider to be the responsibilities of the Office of Management and Budget in terms of a pro-active managerial assessment of the needs of the financial regulatory agencies, and specifically the Home Loan Bank Board?

Ms. HORNER. There was a division, not under my control, within OMB under an Associate Director for Management, which had re-

sponsibility to take a look at managerial issues government-wide. Frequently these issues would be more cross-cutting than they would be particular to agencies and departments. But on occasion they would also be collateral.

Senator GRAHAM. Speaking of cross-cutting issues, we had during the period that you were carrying this important responsibility, a cross-cutting issue of deregulation in the airline industry and financial services to just name two.

One of the issues that that raised was the question of what is the level of supervision required in a now-deregulated industry. We just had a circumstance in which a major airline is now being indicted for criminal activities for failure to adequately maintain its aircraft, and there are indications that there was inadequate supervision by the responsible Federal agencies of maintenance practices. There will be abundant evidence on inadequate supervision of financial institutions in this deregulated environment.

From your perspective in the Office of Management and Budget, what was the cross-cutting consideration given to supervision in a deregulated environment?

Ms. HORNER. There were I think officials in the Department and in the White House who addressed this issue. We had the then-Vice President serving as chairman of the Task Force on Deregulation. I was not a participant in these discussions and did not develop the depth of information which would permit me to make a broad general statement at this time.

Senator GRAHAM. You indicated that when Mr. Gray approached you relative to additional resources, you looked at historic patterns of the agency not filling slots that it already had, and for that and other reasons you concluded that he had not made the case that warranted overcoming the general administration predisposition against any growth in agencies. You did not consider that the change in circumstances from a highly regulated industry to a now-substantially deregulated industry was a factor that warranted a different policy judgment as to the level of supervisory personnel required?

Ms. HORNER. If that had been the issue I was addressing, I surely would have considered that. But I was addressing a very simple question: Could the Bank Board hire up to its current ceiling? No. Were they therefore justified in an increase in the ceiling? No. I was not addressing this beyond that realm.

Senator GRAHAM. You do not think you had any responsibility to ask a larger question? That is, what is the public interest that we are attempting to protect through the supervisory process? And are the circumstances today such that at the level of resources, both numerically, compensation-wide, and other factors, are we accomplishing that part of the purpose?

Ms. HORNER. I think that that is quite a legitimate question. I think it is probably the reason why I strongly urged the Chairman of the Bank Board to seek a pay waiver from OPM in order to be able to hire more examiners. It is not that I had reached a judgment that he could not use them, if he could get them. It is just that the means at my command were not the means he needed in order to be able to get them. It was, frankly, a rather technical decision.

Senator GRAHAM. And in your subsequent capacity at OPM, the statement that was made—which I understand was the May 30, 1986, date—of denial of the Bank Board's request for an exemption from the Classification Act which is attributed to you, was a statement made to the House Committee by the Home Loan Bank Board. You say that is an inaccurate statement?

Ms. HORNER. I know of no such action. Indeed, once again, if the Bank Board had been interested in contacting me, I certainly would have been very eager to hear what it had to say, and that was available to them.

Senator GRAHAM. We have to go to vote. Could I ask one last question, because I may not be able to return.

The CHAIRMAN. I hope you can come back, but if you cannot, please continue.

Senator GRAHAM. One question which I think we can answer before we have to leave. Back in 1985, one of the significant management issues had to do with the direct investment regulation that was applicable to the Home Loan Bank Board. This regulation, which is now seen as being one of the principal factors that encouraged a pattern of profitable investment, there was a proposal made to reverse that direct investment regulation.

It was adopted by the Board. It was submitted to OMB and OMB vetoed the direct investment regulation under the Paperwork Reduction Act. The Bank Board subsequently overrode that veto pursuant to its legal authority to do so.

Were you involved in the management assessment of the appropriateness of the direct investment regulation and the recommendation made by the Home Loan Bank Board?

Ms. HORNER. No, Senator. That would have been handled by the Office of Information and Regulatory Affairs. I would not have been a party to deliberations on that issue or decisionmaking on it.

Senator GRAHAM. And would not have been aware of the Bank Board's concern that allowing continued direct investment was a factor that changed the quantity and particularly the quality of the supervision necessary?

Ms. HORNER. No, Senator, I would not have been part of that decision.

The CHAIRMAN. We will stand in recess until this vote is over, and then we will resume.

[Recess.]

The CHAIRMAN. The committee will come back to order. We had two more back-to-back votes. That is what we are running into today.

I want to proceed into some other areas here. There was a report issued by the Center for Study of Responsive Law in December 1989 which was entitled, and I quote, "The Failed Promise of the National Cooperative Bank." It faulted the Bank for not focusing on extending credit to consumer-oriented cooperatives, particularly those that have experienced difficulty in obtaining credit elsewhere.

I am wondering what types of borrowers you perceive the National Consumer Cooperative Bank is supposed to serve.

Ms. HORNER. Yes, Mr. Chairman. It is supposed to serve cooperatives, cooperative undertakings, which are credit-worthy. That is

what the act requires that it serve. Of course there is a wide range of activities cooperatives engage in, and I know that the Bank has been attempting to expand the range of cooperatives which it does serve.

The CHAIRMAN. Do you have some ideas as to whether there might be some potential out there that we are not realizing presently that we might?

Ms. HORNER. I have had a conversation with the President of the Bank. During the course of his discussion with me regarding whether or not I would want to be nominated for this position, he indicated that one of his areas of interest as the President—now this is different from any responsibility as a member of the Board—is in cooperative health care enterprises.

I have some familiarity with the problems of rural and inner city health care, and I am intrigued by the possibility of expanding of self-help and cooperative undertakings to meet those needs.

The CHAIRMAN. Any other thoughts?

Ms. HORNER. Not that I have sufficiently defined at this point. I think I need to spend some time becoming better acquainted with the Board, better acquainted with its opportunities.

The CHAIRMAN. Do you think the Bank should lend to cooperative entities that are able and willing to borrow from commercial banks or other sources?

Ms. HORNER. Mr. Chairman, I believe that the Act requires that lending be made to credit-worthy organizations but, at the same time, the focus according to its history and its mandate is to try to stimulate growth in areas where credit is not so obviously or readily available. So it is a matter of walking a line.

I have read the Nader Report. I have read the Bank's response to that report. And as I read both of those documents, it became apparent to me that case by case judgment is what is required for membership on this Board, because many of the decisions cannot be divided into black and white.

The CHAIRMAN. I am wondering what efforts you think the Bank should undertake to meet its statutory target of extending at least 35 percent of its loans to cooperatives, most of whose members are low-income persons or whose activities would benefit such persons.

Ms. HORNER. Yes, Mr. Chairman. I know that the president of the Bank has indicated to your committee in a letter to the Majority Counsel that he believes the bank can always do better. The target is 35 percent. I believe it is 28 percent now. I think that continued contributions to the National Cooperative Bank Development Corporation are significant here to provide seed money for starting up new co-ops, challenge grants, technical assistance, the National Regional Loan Fund organizations, all of these things need to be used to spur development of new cooperatives, and to strengthen the development of existing cooperatives in low- income areas serving low-income people.

The CHAIRMAN. Now the Bank operates under an authority that does not require that it meet the capital adequacy or risk-based capital guidelines imposed on the commercial banks or thrifts. I am wondering, in your view what is a safe and prudent level of capital for the Bank?

Ms. HORNER. I would have to become acquainted with the Bank through Board deliberations to make any hard and fast judgment in that area. I know that the Bank has made considerable effort to develop sufficient capital to allow it to have access to capital on behalf of its members with rates that will enable it to do its job for its members.

I know that this has arisen in the matter of the Treasury debt. Again, I think that I would have to await membership on the Board to make any concrete judgment.

The CHAIRMAN. What rate of growth and scope of activities do you think would be appropriate for the Bank's thrift subsidiary?

Ms. HORNER. I do not have a judgment on that at this point.

The CHAIRMAN. Have you looked at it? How thoroughly have you been briefed generally on the activities of the Bank?

Ms. HORNER. I have had a general, broad briefing by the senior officers of the Bank, and I have read management statements, management reports, and again I have read the Nader report and the response to it. But as for particular decisionmaking, a member of the Board I think must make decisions through the collegial experience of Board discussion and in-depth assessment. It cannot make those judgments in the abstract.

The CHAIRMAN. Senator Wirth.

Senator WIRTH. Thank you, very much, Mr. Chairman.

Ms. Horner, thank you very much for coming. I am sorry about all the votes back and forth. You were on the White House Fellows Commission for awhile. Are you still on that?

Ms. HORNER. No, Senator. I was on the Commission as Director of the Office of Personnel Management, and now that I am Under Secretary of HHS my successor at OPM has assumed that position. I was sorry to leave it. I know that you were a White House Fellow.

Senator WIRTH. I met with them about a week ago. It was a very lively, aggressive group of young people.

Ms. HORNER. They get better every year.

Senator WIRTH. They sort of had a down period there for awhile. They got very "safe."

Ms. HORNER. For several years while I was on it, we made special efforts to get only the very best people so as to build confidence in the organization again.

Senator WIRTH. When were you at OMB? What were the dates?

Ms. HORNER. I was at OMB from May of 1983 until August 2, 1985.

Senator WIRTH. During that time, your responsibilities again were?

Ms. HORNER. I had responsibilities for five departments, including 113 agencies. I should say, I had responsibility for overseeing a staff of about 60 examiners who examined those departments and agencies.

Senator WIRTH. They included the SEC?

Ms. HORNER. The Departments were Treasury, HUD, Justice, Commerce, and Transportation. I had responsibility for the SEC, the FTC, the Small Business Administration, the GSA, the OPM, and others.

Senator WIRTH. The Commodities Futures Trading Commission?

Ms. HORNER. Yes.

Senator WIRTH. So you had all of the financial agencies of the Federal Government?

Ms. HORNER. Senator, I had the responsibility for supervising a group that monitored personnel ceilings and supervisory issues for those agencies. I was not responsible for regulatory policymaking in the agencies, which would have been under the Associate Director for Information and Regulatory Affairs.

Senator WIRTH. How would you characterize the Reagan administration's policy about financial institutions? How would you describe the policy you were being asked to carry out?

Ms. HORNER. Senator, I was not being asked to carry out policy with respect to financial institutions while I was at OMB or at any other time, for that matter. My job with respect to agencies which were regulatory was not to assess their regulatory policies. That was done by the Associate Director for Regulation and Information. My job was to make a determination during each budget cycle as to operating budget necessities.

Senator WIRTH. Presumably form follows function on the numbers of people and how you structure an agency follows the purposes that the administration defines for those agencies. Is that not right?

Ms. HORNER. Yes, that is right.

Senator WIRTH. Let me ask you the question again. How would you define the policy that you were pursuing at OMB related to those financial institutions?

Ms. HORNER. I was not pursuing an across-the-board policy relating to those institutions. I was looking at things like whether the SEC required additional computer capacity for its modernization efforts.

Senator WIRTH. Does the SEC require further staff, as well? That would be one of the questions you would be asked to address. Is that not right?

Ms. HORNER. In virtually every case, frankly, I can think of no exceptions, these decisions were made in quite a routine way and quite easily between the relevant budget examiner and the agency. For instance, in the case of the SEC I think I may have had a very quick, simple negotiation at one point in my tenure over personnel levels there, but it rarely rose to my level because these were quite routine decisions. There were no major controversies.

Senator WIRTH. Again let me ask you: What was the policy toward the regulation of these financial institutions that you were pursuing? What was the Reagan administration's policy for the SEC and for the CFTC? These were institutions that you were supplying the resources to. Therefore, you must have known what the policy was so that you could determine what the resource flow ought to be.

Ms. HORNER. Well, the intertwining of policy and resource would come to my attention only in a case where the agency head felt that the implementation of policy required resources which the OMB staff determined not to make available.

Senator WIRTH. So from your perspective, it did not make any difference what the policy was?

Ms. HORNER. From my perspective, the role I filled there initiated attention on my part to an agency of that sort when the agency itself felt it had a difficulty or an issue.

Senator WIRTH. Let us try a specific, then.

During the time that you were there, there was a significant battle between John Shad at the SEC and the Congress over the level of regulation at the SEC. John Shad maintained, "We can do more with less." And he came in with a very strong deregulatory charter from the White House, from the new administration, and attempted to pursue that throughout.

Would that deregulatory charter be an item that—was that at the time when you said you got involved in the SEC? Was it over that, a debate over that charter that you got involved in the discussions of personnel for the SEC?

Ms. HORNER. No, I do not think so.

Senator WIRTH. You said it came up one time?

Ms. HORNER. Yes. I think I had a phone call from Mr. Shad once in my over 2 years there, and I think it was of the nature—now this is 6 or 7-years ago, and I am only going to give you a vague impression—but let me say that my vague impression is that it was of the nature of whether he could have five more people for his office of X or Y, or whatever it was. That would be a question where I would listen to my staff and listen to him and make a judgment. I do not know what the nature of the question was. I do not know how many people. It may have been the operating budget for computerization. I do not know.

Senator WIRTH. You had no idea that there was a policy set by the administration for how the SEC ought to be staffed, and how the CFTC ought to be staffed, and how the Federal Home Loan Bank Board ought to be staffed, and how the Treasury Department ought to be staffed? There was no policy that came to you for you to then match your decisions with that policy?

Ms. HORNER. There would not have been a single overriding policy for the staffing of a handful, or a variety, or a range of agencies.

Senator WIRTH. This is more than a handful. I mean, if we look at the SEC, the CFTC, and the Department of the Treasury, and the Federal Home Loan Bank Board, we are talking about four major financial institutions that the Federal Government regulates. The Securities and Exchange Commission, Wall Street, the CFTC, the Chicago markets—I mean, you are familiar with all of this—the Federal Home Loan Bank Board, the S&L industry, and the Department of the Treasury, the commercial banking structure?

Ms. HORNER. Each of those agencies or departments would have started from a different base and had different needs and different levels of need, and would have been assessed independently.

Senator WIRTH. Who would assess that?

Ms. HORNER. They would be assessed by the OMB staff in the first instance.

Senator WIRTH. What OMB staff?

Ms. HORNER. There were examiners——

Senator WIRTH. Reporting to whom?

Ms. HORNER. Reporting to me.

Senator WIRTH. Presumably the examiners would have had some direction, would they not, from their boss? Or were they independent characters who just did what they wanted to do?

Ms. HORNER. The examiners had direction, which was to see that the agencies were capable of running efficiently and effectively in meeting their statutory requirements and not beyond that.

Senator WIRTH. You would give them no direction beyond that?

Ms. HORNER. I would give much direction beyond that with individual cases, or when individual cases or issues arose. When an issue arose, it arose as a result generally not of consonance but of a difference between the OMB staff and the agency or department. At that point, I would have a discussion as a rule with a person from the department or the agency—the agency head, the deputy secretary, sometimes a Cabinet member.

Senator WIRTH. Who would have told John Shad that the policy is we can do more with less? Where would that policy have come from?

Ms. HORNER. The policy would emanate from the President's appointees, in the first instance. It would emanate from John Shad as the President's person to devise the policy.

Senator WIRTH. Who came up at that time—and I chaired the subcommittee at that time on the House side that had jurisdiction over the SEC, and we had a major war for 3 years with the chairman and with the Administration. They wanted to dramatically deregulate the securities industry, and the cry was, "we can do more with less."

Ms. HORNER. That would have been Mr. Shad's recommendation to the President, which he presumably accepted.

Senator WIRTH. That was then attempted to be carried out, and they came in with much lower budgets on a steady basis. Now presumably coming in with that kind of a budget request, it was in the President's budget, and it was much lower than they had had a year before. They wanted to dramatically deregulate the investment banking community, Wall Street, the Securities and Exchange Commission. That was the policy that Chairman Shad came in with. That was in the President's budget.

Now presumably in drafting that sort of thing in the President's budget, that would have had to have had a chop from your office, would it not?

Ms. HORNER. It would have.

Senator WIRTH. You would have been aware of the fact that if you see a budget request go from $100 million a year to $73 million a year, or $120 million down to $95 million, that would have been a dramatic shift in resources, that somebody had made a policy decision to deregulate that agency; right?

Ms. HORNER. And that would have been the head of the agency.

Senator WIRTH. You would then carry that out. Is that right?

Ms. HORNER. We would carry it out, unless it seemed not consonant with our general sense of Presidential policy.

Senator WIRTH. So there was a Presidential policy that you were aware of?

Ms. HORNER. Every agency and department had a variety of policies that it was carrying out under Presidential direction, and often on a recommendation of the agency or department head.

Senator WIRTH. Earlier in your testimony today you said that there had been a Presidential policy to limit the size of the work force at all federal agencies. Does that in hindsight appear to you to have been a wise policy, per se?

Ms. HORNER. The first thing I have to say is that that policy was frequently honored in the breach, as a result of interventions by agency and department heads, so that it was a general direction set by the President with which I had no quarrel. But there were frequent occasions on which agency and department heads would question that direction's applicability in a given instance, and the President would agree.

Senator WIRTH. Were there any instances where that was questioned by individuals related to the staffing of the CFTC, the Securities and Exchange Commission, or the Federal Home Loan Bank Board?

Ms. HORNER. At this point, I would have no way of knowing that.

Senator WIRTH. You don't remember anything like that. You said that this was frequently honored in the breach.

Ms. HORNER. I would be likely to remember that the kind of breaches of the policy made by people who made appeals to the President, for example, and frequently the large departments would fall in that category.

Senator WIRTH. From the perspective of the Commerce Committee on the House side, we had jurisdiction over the Securities and Exchange Commission. We had jurisdiction over the securities side of the CFTC.

And we were aware of the fact that there was a very strong directive to those agencies to deregulate. To use Mr. Shad, who described it quite eloquently, we can do more with less. That was the theory that came in.

So, we were certainly very aware of the policy and we were told that. Mainly, people from the Department testified, asking for authorization or for appropriations for those agencies, they came up with a very clear signal and a very clear message that the idea was to deregulate and to get the Government out of a lot of these agencies' business.

If that was very clear to us, I assume that that was clear to you all at OMB as well. I would assume that would be.

Ms. HORNER. I imagine that this policy, to the extent it emanated from the administration and had been set by the President's appointees pretty strongly at the outset, had been well-established and well-communicated throughout OMB and elsewhere by the time I arrived. This would have been going on while I was Director of VISTA.

Senator WIRTH. I'm not suggesting you set the policy, you know. This was a policy. It was there. And there was a consistent pattern of deregulation.

And, following that, a consistent pattern of de-supervision.

Tell me about the role throughout all this of the so- called Task Force on Deregulation.

Did you provide funds to the Task Force on Deregulation? Would that be something that would get funding from OMB?

Ms. HORNER. I don't know whether it got funding from OMB. I don't recall having any participation in it—funding, operation or policy.

Senator WIRTH. What was the Task Force of Deregulation? Was that the name of it?

Ms. HORNER. I believe it was the then Vice President's study of ways to deregulate the American economy to enhance it.

Senator WIRTH. What was their role with the White House and OMB? Were they sort of a free-floating ombudsman that could move on any of these issues if they wanted to?

Ms. HORNER. Senator, I have to say I was not a student of every task force and activity underway in the administration at that time. I had no participation in the activities of that task force and was extremely busy with the activities I did have.

Senator WIRTH. Were there reports that came out of that task force as to what they thought they were accomplishing? Do you know?

Ms. HORNER. I believe that the task force concluded in a report. At the end, there was a report.

Senator WIRTH. When was that?

Ms. HORNER. I could not recall the date of that report?

Senator WIRTH. Was that 1983? 1985? Do you have any sense of when it was? Was that before you got to OMB?

Ms. HORNER. I think it's after I got there. Possibly, after I left there.

Senator WIRTH. And there was a summary of what they thought they had done. Is that right? What had been accomplished?

Ms. HORNER. Senator, I have not read that report. I'm here to talk about the National Cooperative Bank.

Senator WIRTH. I know. We're all-engrossed.

Ms. HORNER. This is 6- and 7-year-old history, in a realm in which I did not participate and, therefore, I'm not going to be very well-equipped to be helpful in providing you with this information.

Senator WIRTH. As a matter of general policy directions, however, these things are very much involved in the discussions in the news in 1990.

Ms. HORNER. Certainly, they are.

Senator WIRTH. I think it's appropriate that we all have our memories refreshed to try to understand what the flow of events were. I think, for example, on the whole business of the CFTC jurisdiction, that that went much too far and we were not successful in Congress in containing it the way we should have.

I think, on the SEC, we did a pretty good job of containing the curve of deregulation in the securities industry, which would have been a major error.

Looking back, what did we learn from the 1980's about deregulation and about de-supervision that will perhaps provide a lesson for us in the future?

When you testified he testified in front of the committee, Mr. Gray, this was before the U.S. Senate, Mr. Gray said:

Several high-ranking officials at OMB.

I think we went through this a little bit earlier. Told me personally in 1985 and 1986 that we were violating the deregulatory

policy of the administration by asking for substantial increases in staff at the Bank Board.

When asked who are those officials, Mr. Gray responded:

> Connie Horner at OMB, the OPM Director, and, later, Carol Crawford, who was at OMB. Both of them had the title of Associate Director.

Is that an accurate history, do you remember, that Mr. Gray is quoting there?

Ms. HORNER. No. I don't have any recall of a conversation like that. As I testified a little earlier this morning, my decision relating to his ceiling for Examiners was informed by the fact that, for reasons beyond the control of OMB, he had been unable to hire as many Examiners, enough Examiners, to meet the ceiling he had already been authorized for a number of years running.

I advised him to use other means at his command, which advice he may or may not have accepted. I don't know. I think he didn't.

And I don't remember having any conversation on the subject in the light of his account there.

Senator WIRTH. There was no conservation. You talked to him. You remember about ceilings and being unable to fill those ceilings for reasons he said that later that he didn't have the authority to hire people above certain salary levels.

Isn't that right? And it was suggested to him that he go to OPM and get a waiver?

Ms. HORNER. That's right.

Senator WIRTH. But, you don't remember having any conversation with him about violating the deregulatory policy of the administration?

Ms. HORNER. No, Senator, I do not.

Senator WIRTH. Then, did he come back to OPM and ask for a waiver of the salary level?

Ms. HORNER. Now, while I was at OMB, I don't know whether he ever took my advice and went to OPM. I heard a little while ago, to my surprise, testimony or a suggestion from Senator Graham that he may have gone to OPM for a waiver subsequent to my going to OPM.

That is information I have never heard before.

Senator WIRTH. There are ways of checking that out. I'm sure that's a matter of public record, when you ask for a waiver. But, you don't remember any kind of decision like that?

Ms. HORNER. No.

Senator WIRTH. There is also a discussion from Mr. Gray that, in meetings with you, that he had requested a number of Examiners and that he was given 40 extra Examiners. If he hadn't been given those 40 extra Examiners, what he was saying is that he was going to push the Examination back down into the Federal Home Loan Bank Board. And that, if that happened, the administration would lose control over those Examiners, control which was exercised at OMB.

Is that an accurate statement?

Ms. HORNER. I don't remember any such conversation. Earlier this week, I talked with an OMB staffer to ask about this. He indicated to me that this question never even got addressed by OMB because we had found out after he did it, or by simultaneous letter.

There may have been some rumors floating about of the intention to do this, but the issue had not even arisen. And I did not and do not remember any conversation with him about it.

I think he may be confusing—I think the Chairman may be confusing two conversations, two different subjects. I do remember a conversation with him about the apportionment issue.

Senator WIRTH. Have you read Inside Job?

Ms. HORNER. No, I do not even know what that is.

Senator WIRTH. It's allegedly a story about the inside job of how the American public was taken to the cleaners on the S&L crisis. It talks about Gray going and asking—this is a little history. Let me read it to you:

Going and asking for further resources.

Horner told Gray that she was a busy person, but she said she could squeeze him in over lunch at the White House. As Gray walked through the iron gates of the White House on the way to the Executive lunchroom, he reflected that the root of the thrift problem was the high-fliers, as he liked to call them, the wild and crazy guys like Dickson, McBurney and Hanson. He had made his high-flier speech many times and, that day, he planned to tell Horner again that high-fliers were using brokered money to engage in risky and complicated investments, many of them fraudulent. To stop the abuses, he needed more Examiners to ferret the con men out of the system. Gray had butted heads with Horner over staffing before, but he was sure this time she would see the wisdom of his case. As they settled in for lunch at the White House senior mess, an oak-paneled dining room where only the Cabinet and senior aides to the President were allowed to dine, Gray laid his cards on the table. He wanted to double the Examination staff to 1,400. What's more, with a turnover rate exceeding 30 percent, he needed to raise the Examiner's base pay from an average of $14,000 a year to a level more competitive with private industry Examiners. Gray said Horner ate and let Gray talk. She had been through all this with him before. Like the Dickens character in Oliver Twist, Horner always responded the same way to Gray's request for additional staff:

You want more Examiners?

She told him it wasn't a matter of money, but a philosophy. The administration's philosophy was one of deregulation. That meant fewer regulators, not more.

As Gray listened to her recite the administration list, he reflected on her own bloated staff. Each time Horner trooped over to his office for a meeting, she dragged with her a staff of eight. They filed in like baby whales behind their mother. He could never understand why she brought them along since they never seemed to do or say anything.

And it goes on. I mean, they do write well.

Tell me, is that an accurate description in the White House mess?

Ms. HORNER. I'm astonished. I had lunch with him once in the White House mess.

Senator WIRTH. Were a lot of whales there?

Ms. HORNER. First of all, I was not of a standing that would have permitted me into the senior mess, as he characterized it. However, I did have lunch.with him at the mess, and I'm going to describe to you now, if I may, what I think we discussed at that lunch, bearing in mind that this was a long time ago.

The CHAIRMAN. Before you do, let me just say one thing to you. There are other things that are asserted here later on in this recitation in this book, and we'll get into those after you've had a chance to respond.

But, I want you to consider carefully what you say. You are under oath and you're a savvy witness, and you've been around a long time.

I just want to remind you, think carefully about what you're saying here.

Ms. HORNER. I think I invited him to lunch at the suggestion of a member of my staff because we had an issue between OMB and the Bank Board which was of very long-standing which had flared up again.

There had been an issue surrounding apportionment of funds and an ongoing debate between OMB and the Bank Board as to whether the Bank Board was subject to apportionment by OMB.

OMB staff, I think, had an experience with him in a recent period when they believed that he had violated apportionment and had asked me to talk with him about this and try to encourage his conformity with the requirements of apportionment as they saw them.

And I believe that I invited him to lunch as a courtesy to try to achieve some agreement on this.

I could be wrong, but that's what I believe we discussed. And I believe I was unsuccessful in that discussion. I am sure that we must have also discussed the Examiner level issue.

As to going to his office, I recall one trip to his office. It is possible there was more than one trip. But I remember only one trip to his office. I went alone. I met with him and his chief-of-staff.

There may have been other staff of his present. I don't believe I had any more staff present. Therefore, I am again surprised at the portrait which is being drawn here. I think the portrait is surely interesting and dramatic, and false.

Senator WIRTH. The portrait.

Ms. HORNER. That you read to me about the mess and of the visit to his office.

Senator WIRTH. Let me go on and respond to this as well.

Gray looked around as Horner lectured, noting how much the mess resembled the interior of the ship. Horner said that she might be able to swing 30 more Examiners for him if Gray would be more cooperative and get back into step with the administration.

Gray also said Horner also issued a thinly-veiled warning, reminding Gray of his expense account troubles. She even suggested he could go to jail if his over-charges proved to be a violation of something called the Anti-Deficiency Act, which mandated how much the Bank Board could spend. Gray was already over that amount, way over it.

Gray said there must be some mistake and he can clear it up.

The CHAIRMAN. Could I just stop you there, Senator Wirth?

Did that subject come up or not?

Ms. HORNER. That's the subject I was just discussing. Senator Wirth.

Senator WIRTH.

A few months later, it was discovered that an OMB account had misplaced a decimal point and Gray was, in fact, within his budget. But, the message Horner sent was clear:

The administration could play hardball with one of its own if that person strayed too far off the reservation.

Ms. HORNER. If I may, this characterization of my discourse, which strikes me as being extremely out of character, is implausible to anyone who knows me.

Senator WIRTH.

Gray, however, had a card up his own sleeve. His months of being knocked around by Washington pros had taught him that he wasn't going to make any friends in his job anyway, and hardball was the only way to play the game if you wanted to win.

"OK, Connie," Gray said, "then I'm transferring the examiners to the District Banks."

Horner was stunned. What Gray was proposing to do was to transfer responsibility for all future thrift examinations and supervision from Washington to the 12 District banks across the country.

The district banks, although answerable to the Bank Board in Washington, were independent entities owned and operated by the thrifts within their district.

The FHLBB had oversight over the 12 district banks, but the OMB did not.

In making such a transfer, Gray could remove any authority OMB had over the number of Examiners the Bank Board had or how much they were to be paid.

"Do you mean you're going to have non-government employees regulating?" Horner gasped.

"They're already doing it," Gray said. "I don't see what the problem is with it."

Horner, Gray reported, just glared at him across the remnants of lunch. Although decentralization of the Federal Government is one of the goals of Reaganomics, transferring 700 Federal examiners away from the interfering hands of the White House and Congress was something else.

"Well, I've got to get back to the office, Connie. Thanks for lunch." Score another one for Gray. A week later, Horner trooped into Gray's office at the Bank Board, her eight assistants in tow.

"I'll offer you a deal, Ed," she snapped, sitting herself down at a large dining room table Gray brought to the office for such meetings. The table sat only six comfortably, so Horner's staff had to squeeze in around the edges.

"If you'll agree not to transfer the Examiners to the district banks, I'll give you 39 new ones," Horner said, as though she were making a major arms control proposal.

The CHAIRMAN. Could I just stop you there?

Did that happen?

Ms. HORNER. I don't remember it. I can't say that it didn't happen.

The CHAIRMAN. Wouldn't you remember it if it had happened?

Ms. HORNER. I don't know after 6 or 7 years. I think I would have.

The CHAIRMAN. But, if you went to his office.

Ms. HORNER. I remember going to his office once. That doesn't mean I never went on any other occasion. I don't remember ever going to his office to offer him any number of examiners. That's the kind of thing that I would have done by telephone anyway. I would not have needed to go to his office to do that. I don't remember any of this. I don't remember his telling me in the mess that he wanted to take his examiners out from under the Federal Civil Service.

The OMB staffer I talked to last week said that this issue never came to OMB until he had actually made the decision and did it.

I cannot at this late date say exactly what did or didn't happen. I can say what I remember and what I think is plausible.

Senator WIRTH. Who would have gone with you? Are there staff people that really were assigned to the Federal Home Loan Bank Board?

Ms. HORNER. Yes, there were several staffers who were assigned. There may have been one or two staffers who were assigned.

Senator WIRTH. Do you remember who they were?

Ms. HORNER. I may have it written down here. [Pause.]

I don't think I have the examiners. It wasn't one examiner for one account. There would have been examiners for shared accounts, examiners who had several accounts.

Senator WIRTH. I was just interested in you saying you may have had it written down here.

Did you think a lot of questions like this were going to come up and so you prepared for a variety of those? Is that right?

Ms. HORNER. I had a phone call from a reporter who said she had been apprised that such a question, such a subject might arise. And, therefore——

Senator WIRTH. I just started to do that. Nobody apprised me. Whose the reporter? I'd like to talk to them. That's pretty good. They're everywhere.

Ms. Horner, thank you very much. I just wanted to get that out. I've always heard this line of Ed Gray's:

"We were violating the deregulatory policy of the administration."

And that was very clear to me when I was chairing that Securities Subcommittee on the House side, that there was a very clear deregulatory policy. It was out there:

We can do more with less.

John Shad wanted to deregulate entirely. Those were the two areas over which I had jurisdiction. And that policy was absolutely consistent and absolutely clear.

I'm a little bit surprised when you say you weren't aware of that or weren't operating in compliance with such a policy, because we were certainly, on the Hill, absolutely aware what the administration wanted to do.

That was their stated policy when Reagan ran in 1980. It was a major policy of deregulation to be carried out on our part by the Task Force on Deregulation, chaired by then Vice President Bush.

The CHAIRMAN. We have a situation as well where we have a hearing in here at 2 o'clock. I know you'll be happy to hear that it's not for you, it's for somebody else. But, in any event, today is just a busy day with floor action and other things.

I have a couple of questions that I want to get into here in a minute. But, I want to finish sort of the line of discussion that you and Senator Wirth have been having.

With respect to this account in this book that he was reading from and sort of going through what purports to be a representation, at least from his point of view, of this meeting that he had with you and with, I take it, others present, he's asserting here, without going back to the precise language that you've already heard, that you offered to give him or allow an increase of 39 new examiners if he would not go ahead and move this examination force, or much larger number, out into the district banks.

Your testimony is that there was no such offer made?

Ms. HORNER. No, my testimony is that I don't remember talking with him, as he characterized it. I don't remember making any offer. It's quite possible I did. We're talking about 7 years ago.

The CHAIRMAN. I understand. Believe me, I don't expect you to have perfect recall.

Ms. HORNER. I just don't remember it, that's all.

The CHAIRMAN. It's my understanding this would have been 1985 that this happened.

Ms. HORNER. It could have been. Yes, I think it would have been 1985. Yes.

The CHAIRMAN. That I guess would have been about 5 years ago. In any case, pulling these conversations out in precise detail I know is very, very difficult. That's why I'm asking you.

Ms. HORNER. It could have been in 1984 for the 1985 budget cycle.

The CHAIRMAN. He asserts a little bit later here, according to this account, that he needed 1,100 examiners. He asserts in this account that he said that to you specifically that he needed that many.

Would he have said that, do you think?

Ms. HORNER. I don't know. He may well have. That's a level of detail that one wouldn't remember unless there had been some unusual circumstances.

The CHAIRMAN. I think what stands out in the account, assuming that it's accurate or close to accurate, is if, in effect, there were 39 on the one hand versus 1,100 on the other, that would be a wide gap. Maybe you would have a lot of situations like that where you were talking back and forth with agency heads.

But, you know, I would be surprised if you would count many where there would be that kind of wide disparity, or were there many?

Ms. HORNER. I don't think there were many except for very large departments or for large accounts, like the Customs Service, where we would have been talking a gap of thousands.

So it wasn't indeed unusual for an agency of that size. I think it would have been unusual, relatively unusual.

The CHAIRMAN. You are not able to recall the names. You looked for them, but you do believe there were staff people present from your staff at this lunch or not?

Ms. HORNER. At the lunch? No. I believe I had lunch with him—in the mess, I had lunch with him alone. In his office, I think I had lunch with him and his chief-of-staff, but I'm not sure. There may have been some staff present. I don't remember any staff.

The CHAIRMAN. The meeting that's referred to here—and I want to clarify that because I may have put that in a confusing way to you just now—the meeting here where there was the alleged discussion, the offer, so-called, of 39 new positions versus the 1,100 he was seeking, actually is said to have occurred in Mr. Gray's office after the luncheon in the White House. About a week after it, I take it.

And that you went down with staff people accompanying you.

Would that have been right? In other words, when you met with him in his office, you probably would have taken staff people for that meeting.

Ms. HORNER. For a meeting of that sort, I would have probably done so, yes, although, again, I may well have had such a meeting. But, I don't remember.

The CHAIRMAN. You're clear on that. The account that apparently he has offered here is that you were there and would have brought eight assistants with you.

Ms. HORNER. That would be unlikely because there would have been nowhere near that number working on this account.

The CHAIRMAN. I think it would be useful for us for you to try to make a determination as to who would have been there who might have some recollection, can answer this question as to whether or not this kind of a conversation took place or not and whether this was the nature of it.

I would ask you to undertake to try to reconstruct who would have been there and let us know the answer to that.

Let me move to another area here. IDC Financial Publishing reports that 28 percent—this is with respect to the management of the savings and loan subsidiary of the National Consumer Cooperative Bank—IDC Financial Publishing reports that 28 percent of the S&L's liabilities represent short-term borrowings and deposits of more than $100,000. And that its operating expenses were the highest of all thrifts operating in Ohio, and in the top 1 percent of all thrifts in the country, well over double the national average.

Do you know if any of that represented brokered deposits?

Ms. HORNER. Mr. Chairman, I am not yet acquainted with the details of the S&L. Mr. Condit, the president of the bank, has told me that he would be very happy, should you have questions relating to the Bank and its conduct, its policies and its progress, he would be very happy to participate in an oversight hearing on this subject.

As a nominee for the Board, I would have to defer answering questions at that level of detail until such time as I've had an opportunity to participate in deliberations.

The CHAIRMAN. We can certainly invite him any time we wish if he has conveyed his willingness to come via yourself or anybody else. But, the brokered deposits issue is an important issue.

Are you familiar with that issue generally? Do you know what brokered deposits are?

Ms. HORNER. I'm aware of it, yes. But, not with respect to this particular bank.

The CHAIRMAN. That would be one of the things we would expect you to take a look at and become highly conversant about.

I'm wondering, as a Director, if you would be concerned by these unusually high operating expenses that I've just cited.

Ms. HORNER. I would have to take a look in the entire context. I would have to talk with people involved and get a fuller picture.

The CHAIRMAN. It would seem just on the face of it, and you can't draw that conclusion from just the ata that we have here in front of us, that either the S&L is paying unusually high compensation or it's operating at a relatively inefficient level to run the costs up to that level.

But, you have no knowledge of that?

Ms. HORNER. I have no information at that level, no.

The CHAIRMAN. Until recently, the Bank was effectively unsupervised because the Farm Credit Administration never fulfilled its statutory mandate to examine the full scope of the Bank's operation.

In 1988, the Bank acquired a savings and loan now called NCB Savings Association in Hillsboro, Ohio, thereby becoming a savings and loan holding company subject to regulation by the Office of Thrift Supervision.

I'm just wondering, because you were very much a part of the deregulation philosophy of the 1980's—I mean, you were one of the chief traffic cops making sure that deregulation was implemented.

Ms. HORNER. I would not accept that characterization, Mr. Chairman. I was a budget administrator. I involved myself in matters of dispute. I was not a policy-maker on the subject of regulation versus deregulation.

We had people in the administration whose primary responsibility was in national economic policy, and they were actively involved in decisionmaking in that realm.

The CHAIRMAN. Let me try to say it a different way. I don't want to mischaracterize it. And we may have a difference of opinion.

I understood your answers earlier today, when you were asked about your involvement in the policy levels of discussion and decision-making on the level of supervision and regulation, that you were not there to really make the policy decisions, that you were there basically to carry out sort of the mechanical side of lining up the numbers, getting the people within the budget limits, and so forth.

I think the record will show that you felt that you were not a major participant in the policy setting with respect to deregulation.

Would that be fair?

Ms. HORNER. I think that would be fair.

The CHAIRMAN. I think you also said that you felt it was your obligation to carry out the policies that were coming down from the people who did make those policy decisions, that it was a predominant deregulation policy that was talked about earlier today, and you felt it was your job to carry out that mandate. That you didn't make the policy decisions, but you were very clear on what they were.

It was a deregulation philosophy and it was your job to carry it out.

Is that not a fair summary?

Ms. HORNER. That is fair. But, the fact is that making a decision with respect to supervisory levels or computer modernization may or may not be affected by every single policy applicable to an agency's activities.

And, therefore, I don't think we can draw any straight line; although there are definitely inter-weavings, I think the line is not straight and clear.

The CHAIRMAN. It becomes very important because, on the one hand, a person at OMB can become—to use my phrase and I don't apply this right now to you as such—kind of a master bureaucrat. It's strictly the job of not getting concerned about the policy. The policy directives are coming down from somebody else, and it's your job to cut and fit, cut and fit and to stay out of the policy debate and stay out of the questions as to whether or not what you're cutting and fitting is going to get the job done or not get the job done.

That's somebody else's policy requirement to worry about and to think about.

And I must say I'm a little troubled about that because if that's the way the whole Government works, I don't think it's going to

end up working very well. And I don't think it worked very well during this period.

I think you had some part in that by not being more alert yourself with respect to what people were saying to you, were asking for, resources, and not getting them.

Ms. HORNER. Mr. Chairman, I think I was alert to what the Chairman of the Bank Board was saying to me. I was concerned about what he was saying to me about the difficulties he was experiencing.

And I gave him what I thought was very good advice on how to resolve his problem, which he did not adopt.

Indeed, he did not appeal decisions made at my level to a very readily available and well-known opportunity for appeal, the Budget Review Board.

That suggests to me that one may question the degree of his intensity of effort in this regard.

The CHAIRMAN. It seems to me here that what happened is that he asked for more people and you said no. Isn't that the bottom line?

Ms. HORNER. I couldn't give him more people. He couldn't hire them. He had a pay, recruitment and retention problem. I told him how to go about solving that problem. And I'm sure he was well aware of the other opportunities he had to appeal.

The CHAIRMAN. Of course, what the record would appear to indicate is that, at some point, he apparently took your advice and went to OPM and got the "no" there as well.

Ms. HORNER. I'm not aware of that record. Therefore, I can't comment on that.

Certainly, I would have been very hospitable to such a request. I can't imagine I wouldn't have granted it, since I had advised him to take advantage of the opportunity when I was at OMB.

The CHAIRMAN. I'm not sure we can settle the matter here now. I think you have testified to your views on it and what you can recall, so we have that here as part of the record.

Let me just say a couple of other things. Like you, I am very deeply involved in this whole question of what the health care system of the country will look like in the future. As the Chairman of the Subcommittee on Health for Families and the Uninsured, we are, at least within the purview of the Finance Committee, responsible for trying to craft an overall health care system.

And we've got certain guidelines we are following in terms of trying to achieve universal access to that system, so that everybody can get the health attention they need.

As I understand it, you have been given the job by Secretary Sullivan—I just want to make sure the record is clear on this, and I want to make sure you are understanding what I'm saying—you are the person who has been designated within the Department of Health and Human Services to really spearhead this job.

Is that fair?

Ms. HORNER. I think that's an accurate statement.

The CHAIRMAN. Is it fair to say then with respect to the policy work and really coming up with a design, an approach and a regime within the administration that the person who has been

given the functional assignment to work that through, the mechanics of that proposal, would be yourself.

Is that correct?

Ms. HORNER. Under the close daily guidance of my boss, Secretary Sullivan, yes.

The CHAIRMAN. This is a matter of great interest to the Secretary, and he of course comes out of a medical background and cares very deeply about this. I'm very respectful of him and his interest in it.

But, you're the work horse, if I can use that phrase. You've been given the responsibility to work this problem through and to develop, under his guidance and supervision, a plan.

Ms. HORNER. A series of options for his consideration and possibly the President's.

The CHAIRMAN. Now, it's a huge task. Just the percentage of our national GNP that's going for health care is a phenomenal number, much higher than it is for any other country.

And, as I say, we are deeply involved in this—myself, my staff and I.

I have to tell you that, in order to get this done before the year 2010 or 2040, you know, 5 or 6 years from now, I would think that it would be genuinely a full-time job. I find it's easily a task that I could devote full-time to.

I'm not allowed to here because I have other, multiple assignments that the Senate has assigned that have to be carried out.

But, as the person who is responsible on the administrative side, I have to tell you that I have a concern in my own mind about how many hours there are in the day to be the person who has been given the responsibility to really honcho this major set of issues with respect to a change in the health care system in the country, and who at the same time is going to have the time to go over into an area that you're not greatly familiar with.

As you, yourself, have indicated today, there are a lot of elements of what goes on there, that you're going to have to take the time to learn and familiarize yourself with, and so forth.

I'm just wondering, quite apart from just the personal burdens on you as a single professional person, also about just the question of your being able to do justice to these two assignments at the same time. I realize you are filling a federally-designated assignment, where somebody must come out of the Government to do that.

But, you know, we have an awful lot of Government personnel and I'm hard-pressed to think of many that have an assignment, like the health care assignment, that is as big and as urgent as yours.

I think probably the person over at the Defense Department who is working on Defense conversion right now has an equivalent-sized job, I mean, a big, important job that touches a lot of lives with hundreds of billions of dollars at stake.

And so do you with this health care thing. It's a big, big job, one of the most important jobs the country has to do.

I'm wondering about just the common sense of taking even a talented person like yourself and sort of saying:

Well, even though you've got this enormous task over here, that you're responsible for spearheading, we would like you to chip off a piece of your time, go over here and familiarize yourself with the activities as a board member on the National Consumer Cooperative Bank, and do that as well.

I must say I don't quite understand the wisdom of that.

Ms. HORNER. Senator, I think the President nominated me for this job in knowledge of both of these facts, he and his staff. It is correct that Secretary Sullivan has given me a major undertaking.

And it's also correct that I would not want to be a member of the board of directors without putting my full integrity and ability to work in support of that bank and its members.

I can only say that, at one point early in my tenure in the Government, when I was a far less experienced executive than I am now, for a little over a year, I held two jobs—as Director of VISTA, a major program; and as acting Associate Director of its parent agency, ACTION, which had responsibility for the agency's budget and field operations and personnel.

I like to undertake challenges. I like the process of learning as much as I can and learning it well. And if confirmed, I would enter with great relish into the challenge that you very accurately describe.

I think that's all I can say by way of attempting to reassure you.

The CHAIRMAN. I appreciate that, and I appreciate the kind of intention and zeal that you bring. I admire that.

And I appreciate those kinds of expressions of self-confidence and commitment. Those are important and valuable and I admire them, and I admire them in you.

So, I want to be very clear about that.

I have to tell you at the same time, we've got, I think, a building crisis in our health care system. We had some of the top specialists in the country come in just this last week talking about the tremendous pressure on the hospitalization system.

We've got hospitals closing all over the country. We've got at least 37 million people right now who don't have any health insurance in this country, as we sit here this very minute.

You and I have it. There are 37 million people who don't have it. You don't have a proposal yet in the administration. The clock is running. People are being turned away from emergency rooms at every hour of every day in every major city in this country.

And we've got a terrifically important task to do there. And I want to see it done as quickly as it can be done, and I don't think it's moving fast enough, quite frankly.

I don't aim that just at you, but you are the person who is in charge of the effort. Somebody else made that assignment and had the faith to give it to you.

And I want to see it move. And I'm frank to say to you I don't want to see you very much distracted by other things.

It would be different if you were up here with a proposal right now on the health care system and that job was done and you said:

Look, we've really sort of figured that one out. Here's an opportunity to go over and get involved in something else, and I've got an interest in it and curiosity in it and I've been invited to do it. And I would like to go and tackle it.

The problem that you have right now to solve, and I'll say it again, is one of the most important problems in the whole country to solve. And I'd like to see it moving faster.

I don't put all that burden on you. We have responsibilities in that area and we're moving at the same time, and so forth.

So I have to tell you that I'm somewhat troubled about that. This whole question as to how many jobs can be done and done well at one time when you've got an urgent task, there are people's lives and well-being depending upon getting it done and getting it done quickly. And I don't see that sense of urgency.

I'm not aiming that at you when I make that point. I don't see that driving sense of urgency right now within the executive branch of Government the way we ought to see it.

So I'm not too excited about the idea of taking the person that's in charge of it and getting her diverted off into a lot of other tasks.

It wouldn't matter if it were somebody else that was sitting here in your shoes. You happen to be the person that's been asked to do that. And I have to tell you, I have a reservation about that, a serious reservation about it.

And as I go around my State, I've been visiting hospitals, I've been talking with people in health clinics. I've been talking with people in homeless shelters, and so forth, who are going without health care and have an enormous reliance right now on you.

They don't know you but you are the person in charge in this Government right now to craft that effort. And they're out there waiting for you to get it done.

And I hear you come in here and say that you feel that you can tackle a job of this size and complexity, and obviously it's going to take time, you know, it leaves me with some reservations inside.

And it wouldn't matter who the person was in that situation. It happens to be you. You know, it could be anybody else who would be asked to do these dual tasks.

So I have to tell you that I have a concern about it and I think if we could convene the population of the country today and have them on the face of that single fact sort of make a vote, yes or no, as to whether or not they wanted to give you another task to do at this particular time that would take even so much as an hour a week away from this other task, I think the vote would overwhelmingly be:

No, don't do that. Not this person, because this person has an absolutely critical job. Find somebody else in the Government that's got brains and talent that doesn't have one of the most urgent jobs where public health depends upon it, who can perhaps give more readily some time, without taking it away in a form that may actually come right out of the well-being of other people.

So I'm making a personal statement. That's how I feel. And I want it to be part of the record.

If you want to make any comment on that or anything else before we close, I'd be happy to have it.

Ms. HORNER. Mr. Chairman, I certainly entirely concur as does Secretary Sullivan in your sense of urgency toward the task which we all mutually are undertaking right now in the Executive and Legislative Branches.

We are all deliberating. We are all consulting. And I think it is a major task. That being said, I have to say I have no history of taking on tasks beyond my capacity to achieve.

I have thought about this. I have other discretionary activities within the Department; as Under Secretary, my activities are at the discretion of the Secretary.

He has given me this task and many others. This obviously is the most important one. And should such a problem arise as you describe of a conflict of assignment of my time doing the health project and the bank project, it would be the other discretionary tasks which would be assigned to other parties within the Department.

And I hope that, as you consider this question, that you would take that into consideration.

The CHAIRMAN. I appreciate your comment on it. My reservation stands. It would apply to anybody that was in the same situation that you happen to find yourself in.

I have very strong feelings about it, and we could stay here the rest of the day and talk about it. If you folks don't have a recommendation ready to go early in 1991 to get this job done—and I mean over-hauling the health system in this country—I think you will not have done your job.

People are waiting to get this done, and they are waiting in poor health to get it done. You and I are sitting here one presumes in relatively good health. Were we not, or were we one of those folks on the outside, I think we would have a sense of wanting to have the thing speeded up and not very many discretionary activities in or out of the Department.

I am frankly disappointed you are not spending full-time on it. I think somebody should be given the assignment full-time.

Ms. HORNER. There are people, Mr. Chairman, who are involved fulltime on that.

The CHAIRMAN. Are they running the project?

Ms. HORNER. I give them direction to run the project.

The CHAIRMAN. You give the direction when you're there to give the direction. If you're over at the National Consumer Cooperative Bank at a particular time, you're not going to be giving them direction because you're not going to be there then to give them the direction.

I mean, it would be nice if we could all be in two places or 10 places at once. That's not the way the world works.

In any event, I've made my comment. You've made yours, and I think we better leave it at that for the moment.

We thank you for your testimony. We will have some questions for the record that we would like you to respond to from other members of the committee and perhaps from me. And I know you will do so.

The committee stands in recess.

[Whereupon, at 1:30 p.m., the hearing was adjourned.]

[Additional material and response to written questions follow:]

THE UNDER SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

August 6, 1990

Senator Donald W. Riegle
Chairman
Committee on Banking, Housing and Urban Affairs
534 Senate Dirksen Building
Washington D.C. 20510-6075

Dear Senator Riegle:

During my [redacted] before the Senate Banking Committee in a hearing to consider my nomination to be a director of the National Cooperative Bank, Senator Robert Graham asked a question regarding a decision I had reportedly made in early 1986, while serving as Director of the U.S. Office of Personnel Management (OPM), regarding Federal Home Loan Bank Board pay.

For your consideration, I have attached the 1986 exchange of correspondence between Federal Home Loan Bank Board Chairman Edwin Gray and me which OPM has made available to me and which I believe reflects the basis for Senator Graham's question.

You may recall that I was exceedingly surprised to hear Senator Graham's account of a 1987 House Government Operations Committee report which concluded that I had denied the Bank Board pay relief during my tenure at OPM. I was especially surprised, given that, as I testified before your Committee, while at OMB I had strongly urged the Bank Board to seek just such relief, in the form of a waiver for so-called "special pay rates," in the belief that pay, not hiring ceiling levels, was the cause of the Bank Board's inability to hire the numbers of bank examiners it wanted.

Therefore, after the hearing, I contacted OPM to see if it had a record of a request for special pay rates and/or denial of such a request during my tenure.

Two conclusions emerge from a review of the correspondence. First, as I had at OMB, while at OPM I continued to urge the Bank Board to seek special pay rates. Although the Bank Board chairman in a February 18, 1986 letter to me indicated he intended to do so if OPM did not concur in an alternate, preferred proposal (". . . we seek approval to establish special pay rates for our occupational series most severely affected by the compensation disparities cited above"), in fact, OPM can find no record that he ever did. In response to that portion of his February 18 request to me, this was my reply:

". . . I see no reason for you to delay a formal request for special salary rates. I suggest that you send a complete special rates request immediately, prepared in accordance with Federal Personnel Manual Supplement 990-2, Book 530. Judging from the information presented in your letter and its attachment 2, most of the preparatory work has already been done. My staff is available to provide you with any assistance you may need to develop your request, and of course to process it as quickly as possible after we receive it."

It is clear from this correspondence that I did not remember denying the Bank Board while at OPM the pay relief I had urged it to get from OPM while at OMB because I did not deny such a request. Rather, I continued to urge the Board to seek it. Indeed, in the same response to Mr. Gray's February 1986 letter, I also called his attention to another authority, the so-called "superior qualifications appointment," which also authorizes higher pay.

However, now that I have the Bank Board's February 18, 1986 letter in hand and have been able to review its contents, a second conclusion emerges. It is apparent to me that the reference to "exemption to the Classification Act" made by Senator Graham during the hearing applied to a different provision of Title V than the one I understood us to be discussing. In other words, although my testimony is literally correct in that I was, when I testified, unaware of any denial of exemption, I believed my response to apply to an exemption related to special pay rates.

I believed the "exemption" Senator Graham referred to was the "special pay rates provision" we had been discussing earlier in my testimony. Therefore, where the questioning refers to exemption from the Classification Act, my response relates to special pay rates. However, a review of the Bank Board's letter to me indicates the "exemption" questions referred to a Bank Board request to be exempted entirely from the General Schedule classification, pay, health, and retirement systems. This request was the primary subject of the letter and was accompanied by documentation of the Bank Board's difficulties in matching private sector and other Federal sector pay and benefits. It was also accompanied by a Bank Board legal opinion regarding authority for such an exemption.

In my May 30, 1986 letter to the Bank Board Chairman, I wrote that OPM staff had carefully reviewed the Bank Board's legal arguments and found no legal basis permitting the broad exemption from the General Schedule and other systems the Bank Board sought. It was in this letter that I reiterated my recommendation that the Bank Board avail itself of existing

authorities which could provide relief. The Bank Board, according to OPM records, never did follow through and seek to use those authorities. Had I been aware, before the hearing, that the Committee would inquire into this 1986 exchange of correspondence, I would have been happy to review it and thereby to have been able to provide the Committee a more complete and clear response during the hearing.

I regret that I did not at the time know of the citation of the Classification Act provision to which Senator Graham referred. I hope this letter will serve to clarify my response and request that it be included in the hearing record.

I look forward to receiving any questions the Committee may have and replying to requests which occurred during the course of the hearing.

Sincerely,

Constance Horner

Constance Horner

Enclosures

cc: Senator Bob Graham

United States
Office of Personnel Management
Washington, D.C. 20415

APR 25 1986 In Reply Refer To: Your Reference

From: James W. Morrison, Jr.
Associate Director
for Compensation

To: Constance Horner
Director

OD86/865

Subject: Response to Federal Home Loan Bank Board (FHLBB) Request for Relief from Employment Compensation and Benefits Restrictions

ACTION MEMORANDUM

- The attached letter from FHLBB describes certain disparities in employment compensation and benefits between FHLBB and other financial regulatory agencies. FHLBB requests an exclusion from the General Schedule classification and pay system and from the Federal life insurance and health benefits programs. In addition, FHLBB requests relief from certain restrictions on performance awards and bonuses under the Performance Management and Recognition System and the Senior Executive Service.

- The matter of coverage under the General Schedule has been in dispute between CSC/OPM and FHLBB almost since the Classification Act was first enacted in 1949. CSC/OPM has consistently denied FHLBB's requests for exclusion from the Act. In addition, there is no authority to exempt FHLBB employees from coverage under the FEGLI and FEHB programs, and FHLBB meets the conditions for SES coverage.

- The proposed response attempts to solicit FHLBB's support for efforts to expand alternative personnel systems. The letter also invites FHLBB to submit a formal special rates request and calls attention to the statutory authority for superior qualifications appointments at GS-11 and above.

- Additional information on the applicability of the Senior Executive Service and Performance Management and Recognition System is contained in the attached background file.

RECOMMENDATION

I recommend that you sign the attached letter to the Chairman, Federal Home Loan Bank Board.

Attachments

OPM INTERNAL REVIEW FORM

Use this form to record reviews of all packages for decision by Associate Directors, Deputy Director, or Director. It must be kept permanently with the official file copy (yellow) of the document.

Type of Package (FPM Letter, AM Supplement, etc.)	Date Review Initiated	Indicate Need for Priority Handling, If Necessary
Letter	4/23/86	
Title of Package	Control No. (OPE Use Only)	
Response to Federal Home Loan Bank Board's request for relief from Classification Act.		

Head of Group/Office Submitting Package	Return to	Telephone Number
Reginald M. Jones, Jr.	Jan B. Karicher	632-4634

Type of Review (Check One)

☐ Simultaneous—For simultaneous review (1) Use a separate copy of this form for each reviewing office, and (2) check (✓) the other offices reviewing the package concurrently

☑ Sequential

SECTION I—STAFF REVIEWS

Use this section for:
1. reviews by originating office below final approval level,
2. reviews by other offices below final organizational approval level, and
3. review of drafts.

✓	Organization	Signature	Date
✓	CBB	[signature]	4/23/86
✓	CBB	[signature]	4/23/86
✓	CB	[signature]	4/23/86
✓	CW	[signature]	4/23/86
	OEP	[signature]	5-5-86
	OGC	[signature]	5/5/86
	OGC	[signature]	5/7/86
	OGC	[signature]	5/7/86
	OIG	[signature]	5/7/86

SECTION II—FINAL OFFICIAL REVIEWS

Review this package if a check appears by the abbreviation of your organizational title.

Enter "Comments attached" beside your signature if you are attaching comments for the approving official's information.

✓	Organization	Signature	Date
	AG		
	CIG		
✓	COMP	[signature]	4/24/86
X	STAFF	[signature]	4/25/86
✓	WED	[signature]	5/5/86
	OCR		
X	OGC	[signature]	5/14/86
	OIG		
	OPC		
	OPE		
✓	OEA	[signature]	5/5/86

SECTION III—Reviews by Director's/Deputy Director's Office

✓		Signature	Date
✓	Executive Secretariat	[signature]	5/21
		[signature]	5/21
	Deputy Director		
✓	Director	[signature]	5/20

U.S. Office of Personnel Management
AM Chapter 6 Section 3

OPM Form 1480 (Rev. 3/83)

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

Office of the Director

May 30, 1986

Honorable Edwin J. Gray
Chairman
Federal Home Loan Bank Board
1700 G Street, NW.
Washington, DC 20552

Dear Mr. Gray:

Thank you for your recent letter concerning significant disparities in employment compensation and benefits between the Federal Home Loan Bank Board (FHLBB) and other financial regulatory agencies.

We have carefully reviewed your legal arguments concerning the exclusion of FHLBB employees from the Classification Act (chapter 51 of title 5, United States Code). We find nothing in those arguments that enables us to change the original determination made by the Civil Service Commission in 1950 concerning the coverage of FHLBB employees under the General Schedule classification and pay system (including the Performance Management and Recognition System, formerly known as the Merit Pay System). While coverage under the Senior Executive Service (SES) does not depend on coverage under the General Schedule, FHLBB meets the conditions specified in 5 U.S.C. 3132(a)(1) for coverage under the SES. FHLBB employees also are covered by the Federal Employees' Group Life Insurance (FEGLI) and the Federal Employees Health Benefits (FEHB) programs without regard to coverage under the General Schedule. (See 5 U.S.C. 8701(a) and 8901(1).) We do not believe FHLBB has statutory authority to establish separate life insurance or health benefits programs or to exempt covered employees from the FEGLI or FEHB programs.

While we are unable to offer you any immediate relief from the problems described in your letter, I want you to know that I support efforts to expand recent experiments with alternative personnel systems in the Federal Government. I believe an incremental approach to expanding alternative personnel systems--together with a more flexible special rates program--offers the best hope for giving agencies like yours the flexibility to recruit and retain a well-qualified work force. I hope you will join me in supporting these efforts.

Meanwhile, I see no reason for you to delay the submission of a formal request for special salary rates. I suggest that you send a complete special rates request immediately, prepared in accordance with Federal Personnel Manual Supplement 990-2, Book 530. Judging from the information presented in your

letter and its Attachment 2, most of the preparatory work has already been done. My staff is available to provide you with any assistance you may need to develop your request, and of course to process it as quickly as possible after we receive it.

Finally, I would like to call your attention to the fact that 5 U.S.C. 5333(a) authorizes appointments at a rate above the minimum rate of the appropriate grade for positions at grade 11 or above of the General Schedule. The approval of a "superior qualifications appointment" is based on considerations such as the existing pay or unusually high or unique qualifications of the candidate or a special need of the Government for his or her services. Individual requests must be approved on a case-by-case basis by the Office of Personnel Management (OPM) prior to the actual appointment. This authority also may be delegated to agencies under a formal delegation agreement negotiated with OPM.

Sincerely,

Constance Horner
Director

Received 4-2-86
Office of the Director

Federal Home Loan Bank Board

EDWIN J. GRAY
CHAIRMAN

1700 G Street, N.W.
Washington, D.C. 20552
Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

cc: G. Wahlberg
Director
J. Colvard
C. Smith
D. Cassell
J. Lafferty
M. Doll

February 18, 1986

Honorable Constance Horner
Director
Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Connie:

This describes the significant disparities in employment compensation and benefits between the Bank Board and the Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), and the Comptroller of the Currency (OCC).

The FRB, FDIC, and OCC have enjoyed for years a range of compensation and benefit flexibilities beyond the reach of Bank Board staff. The flexibilities enable these other agencies to offer an employment package comparable in large part to the kind found in many private sector enterprises. As a result, the Bank Board has been at a severe double disadvantage in competing for the top talent in the financial industry arena.

The key to these agencies' flexibilities is their exemption from the Classification Act, an exemption rooted in their enabling legislation. Although they generally follow the salary grades and pay ranges of the Classification Act (GS-1-15), the FRB, FDIC, and OCC have the freedom to fix the compensation of their employees and to provide salary enhancements and benefit programs that they deem appropriate. The Bank Board, on the other hand, is restricted from any such independence due to OPM's interpretation (dated August 7, 1957) that our agency is subject to the provisions of the Classification Act.

In terms of basic compensation, the Bank Board can offer an applicant only the minimum salary level of a grade whereas the other financial regulatory agencies can exceed the minimum level. For example, in filling a senior

financial analyst position, the Bank Board could offer a candidate with exceptional related experience a starting salary of only $37,599 (step 1 of the GS-13 range); the other agencies could offer $48,876 (step 10 or the maximum rate of the GS-13 range) - a starting difference of $11,277. In setting the grade limits of particular occupations, the Bank Board is restricted to the criteria of classification standards published by OPM (in many cases 15-20 years ago) while the other agencies can determine the value of their occupations according to current industry conditions. Furthermore, in promoting individual employees, the Bank Board is restricted to narrowly defined increases rather than to levels commensurate with employees' contributions.

The Bank Board suffers further disadvantages with regard to compensation enhancements. The FDIC, for example, annually grants each of its employees a regional pay differential over and above any Governmentwide cost of living adjustment. The differential varies from year to year and from one geographic region to another, but all FDIC employees in 1985 received between approximately 2%-10% in addition to their base compensation. In 1986, when all Federal employees (including Bank Board staff) are receiving no salary adjustment, FDIC employees are receiving an increase between 7%-20% on top of their base pay.

Another disparity of this kind exists regarding bonuses. The FDIC can grant a bonus to all of its officers each year for superior performance, and the OCC has a salary increment program in which its superior professional employees can receive an increment between 2% and 14% of their basic pay. In contrast, OPM regulations governing Senior Executive Service (SES) performance bonuses restrict cash awards to 30%-35% of the Bank Board's career SES staff. Under a liberal OPM interpretation of these regulations in 1985, we were permitted to grant bonuses to only 3 of our career SES employees. Similarly, Bank Board mid-level managers and supervisors were restricted to performance awards of between 2%-3% of basic pay given the limitations imposed by OPM regulations on employees subject to Merit Pay regulations.

If the advantages enjoyed by the FRB, FDIC, and OCC in determining direct compensation and salary enhancements were not enough of a disparity, these agencies also provide benefit programs far more liberal than standard Government benefit programs available at the Bank Board. Employees in these agencies can choose life insurance and health programs (including dental and vision options) at no cost, or at very limited costs.

Among these three agencies, the highest cost for life insurance is 7 cents biweekly for $1000 of basic coverage (FRB) whereas Bank Board employees pay 20 cents biweekly for $1000 of basic coverage. The cost disparity in health coverage is even more striking. The highest cost for Blue Cross-Blue Shield maximum family coverage among these other agencies is $20.64 biweekly (FRB) where parallel coverage for Government Blue Cross-Blue Shield is $66.13 biweekly.

In addition, both the FRB and the FDIC offer employer-subsidized savings instruments for their employees. The FRB has both a thrift plan and a 401K plan in which the FRB will match 60 cents for every dollar contributed by an employee into these plans (up to a total of 6%). The FDIC provides a 401K plan in which it matches dollar for dollar of employee contributions up to a total of 5%. The OCC has developed a thrift plan but is awaiting final approval from the Treasury Department. The Bank Board, like other Federal agencies, has neither a thrift plan nor 401K plan available for its employees.

Attachment 1 summarizes the benefit comparisons between the Bank Board and these other agencies. We believe it is obvious that the playing field is far from level and that the Bank Board is at a severe disadvantage in trying to compete for the best talent in the marketplace. As long as the restrictions of the Classification Act, the Senior Executive Service and Merit Pay continue to apply, these disadvantages will continue and intensify.

To illustrate the impact of these disparities on our recruitment and retention capability, we are providing you with specific case examples in Attachment 2. We hear these problems cited continuously by our managers and supervisors.

In light of the disparities we have described above and their impact on our ability to recruit and retain talented staff, we continue to be in dire need of relief from several civil service provisions. First, of course, is relief from the Classification Act itself. It is clear that OPM has the authority to interpret the coverage provisions of the Classification Act and to exempt agencies if they fall within the statutory list of exemptions. Attachment 3 represents the legal argument we have developed in support of an exemption. We believe that OPM should recognize our authority to fix the compensation of our employees.

Second, we need relief from the provisions of Merit Pay and the Senior Executive Service. To obtain an exemption from the Classification Act without comparable flexibility for our senior staff (SES or Merit Pay) would frustrate our basic effort to achieve equity.

Third, we also need the flexibility to offer benefit programs similar to those at the FRB, FDIC, and OCC. We believe the authority to establish such benefits would be implicit in an exemption from the Classification Act but, if not, we are seeking separate authorization to do so. Even if OPM maintained its position that the Bank Board is subject to the Classification Act, we would still need the authority to offer these benefit enhancements as a partial solution to our problems.

As a final request, if OPM does not decide to exempt our agency from the Classification Act, we seek approval to establish special pay rates for our occupational series most severely affected by the compensation disparities

cited above. This relief, of course, is a last fallback position from the first three requests because it allows us only to relieve the problems in certain parts of the organization with respect to basic pay.

In my opinion, perpetuation of the disparities and relative inequities which exist today -- and have given this agency unnecessary grief for too long a time -- works to the detriment of a sound national thrift institutions system.

Sincerely,

Edwin J. Gray
Chairman

Attachments

BENEFITS COMPARISON

Attachment 1

January 1986

BENEFITS	FMLBB	FRB	FDIC	OCC
E INSURANCE				
Coverage	Fed. Emp. Grp. Life Ins. Basic (salary plus $2,000) and Optional extras	Fed. Emp. Grp. Life Ins. or Manhattan Life Basic (salary plus $2,000) and Optional extras	Fed. Emp. Grp. Life Ins. or Manhattan Life Basic (Salary plus $2,000) and Optional extras	Fed. Emp. Grp. Life Ins. or Manhattan Life Basic (salary plus $2,000) and Optional extras
Cost	Basic $.20/$1,000 biweekly for employee portion	Basic $.07/$1,000 biweekly for employee portion	FDIC pays full cost	Basic .06/$1,000 biweekly for employee portion
LTH INSURANCE				
Coverage	Fed. Emp. Health Benefits Prog. Over 200 plans (self & family choices)	Fed. Emp. Health Benefits Prog. or FRB Blue Cross-Blue Shield (includes vision care)	Fed. Emp. Health Benefits Prog. or FDIC Blue Cross-Blue Shield	Fed. Emp. Health Ben. Prog. or OCC Blue Cross-Blue Shield
Cost	Varies by plan (BC-BS: $66.13 biweekly for max. family coverage)	BC-BS: $20.64 biweekly for max. family coverage; $7.72 biweekly for self coverage	FDIC pays full cost of self coverage; employee pays for additional family coverage ($12 biweekly)	OCC pays full cost of self coverage; employee pays $13.84 for additional family coverage
Dental/ Vision Coverage	Available in some plans, but with significant limitations	Connecticut General $3.47 biweekly for family coverage	Connecticut General FDIC pays full cost for self & family dental care, but self only vision care	OCC pays full cost for self & family dental care, but self only vision care

BENEFITS	FHLBB	FRB	FBIC	OCC
AWARDS/BONUSES	Merit Pay employees (2%-3% of salary if superior performance rating); SES (5-20% of salary if superior performance rating), but limited to 1/3 career SES employees.	All officers (90) eligible for bonuses based on superior performance. Amounts subject to annual funds	All employees eligible for the following awards: Sustained Superior Performance/Min. Amt. $100; Max. Amt.-lump sum equivalent to a step-increase at employee's grade level; Special Act or Service/$25-10,000 based on benefit of accomplishment and the degree of effectiveness; QSI; and Honorary Awards	All professional employees eligible for salary increments between 2%-14% if performance rating is acceptable or higher
THRIFT PLAN				
Employee Contributions	None	Up to 10% salary	None	OCC has developed a thrift plan but is awaiting final approval from Treasury Department
Employer match	None	$.60/$1.00 up to 6% of salary*	None	None
401K feature Employee Contributions	None	Up to an additional 10% of salary	Up to 10% of salary	
Employer Match		$.40/$1.00 up to 6% of salary*	100% of first 6% contributed by employee	
		*6% is a total limit for Thrift & 401K contributions		
REGIONAL PAY DIFFERENTIALS	None	None	Annual salary increment in addition to Government COLA. Increase based on geographic cost of living survey, but most recent range was between 7%-20%	None

Attachment 2

RECRUITMENT

- In recruitment events, the Bank Board has participated with the top 10 banking and investment firms including: Hanover's Trust, Mellon Bank, Bank of Chicago, Continental Illinois, Exxon, Morgan Guaranty Bank and Trust, and Citibank. These companies offer starting salaries in the range of $32,000 to $36,000. Candidates are incredulous when they learn that the Bank Board offers a starting salary of $21,804 (GS-9, step 1). An MBA candidate interviewed at the Wharton School of Business stated that he would accept employment with the Bank Board only if offered a starting salary of $42,000.

- Another candidate declined initial federal employment as a financial analyst with the Bank Board because we could not pay his relocation expenses while FDIC could.

- Secretarial candidates decline offers of employment citing, as a reason, higher paying private industry positions. As an example, one major policy office has five secretarial vacancies which we have not been able to fill: two have been vacant six months, one has been vacant five months, and two have been vacant two months.

- Candidates for secretarial positions from temporary companies continually decline Bank Board employment because they can make more money as temporary contract clerical help. As an example, a candidate was offered a clerical position at a salary of $12,862 per annum (GS-4, step 1), a rate of $6.16 per hour. She currently earns between $8.00 and $11.00 per hour and declined because she couldn't afford the loss in income.

- A secretary declined our offer of employment when her firm offered her a $3,000 increase to stay.

- A candidate declined the position of financial analyst because, on his salary, he would not be able to afford the cost of living in Washington, D.C.

RETENTION

- Over the last two years, approximately 20 employees (including some of our most experienced managers in the financial and legal occupations) resigned from the Bank Board to accept employment with the Federal Home Loan Bank System because of higher salaries and better benefits.

- In the last month, a financial analyst resigned and accepted a lateral job offer with the Comptroller of the Currency. A major contributing factor in this decision was an opportunity to participate in their more lucrative bonus system.

- Over the past six months, eight administrative employees have resigned to accept employment with FDIC due to their salary flexibility and annual cost of living increases. Two employees, who recently accepted lateral transfers to FDIC, received an immediate increase in compensation of between $2,500 and $4,000 annually due to the FDIC regional pay differential program.

- An attorney just recently resigned from the Bank Board to accept employment with a private law firm at a salary double that earned as a federal employee. In fact, from June 1984 to June 1985, the Office of General Counsel lost sixteen attorneys to private industry. Entry level attorneys often cite improved opportunities for rapid promotions at law firms rather than the one-grade government requirement. Experienced attorneys usually join firms either starting or expanding thrift/banking practices. A GS-14 attorney can usually receive a 15-20% salary increase and join a firm as Senior Associate with prospects excellent for making partner within 1-2 years. Additionally, within the past two and one-half years, six attorneys have left the Office of General Counsel to join the Federal Home Loan Bank System.

- Two financial economists qualified at the GS-9 and GS-11 level under OPM standards resigned because they felt their qualifications warranted a two-grade higher rating.

- Turnover continued to be high during the last two fiscal years: 27.2% in FY 84 and 20.2% in FY 85, compared to the governmentwide rates of 11.4% and and 12.3% for FY 83 and FY 84, respectively (the latest available figures).

- 32% of employee separations in FY 85 were at the GS-13 level and above compared with 24.9% in FY 84 and 51% in FY 83. In FY 85, there was a phenomenal turnover of staff at the GS-13 level and above. For three of the major policy offices, that turnover rate was: Office of General Counsel, 52%; Office of Examinations and Supervision, 39%; Federal Savings and Loan Insurance Corporation, 33%.

- The reason for resignation as one employee stated in the following letter to his supervisor is representative of the problems the Bank Board is experiencing in retaining qualified employees.

ATTACHMENT 3

Legal Arguments in Support of an Exemption from the Classification Act for the FHLBB and the FSLIC

Inclusion within the statutory definitions:

The Classification Act (Chapter 51 of Title 5 U.S.C.) applies to "Executive agencies" (5 U.S.C. § 5102(a)(1)(A)), a term which is defined as including "Government corporations" and "independent establishments" (5 U.S.C. § 105).

The Federal Home Loan Bank Board ("FHLBB") is "an independent agency in the executive branch" under § 17 of the Federal Home Loan Bank Act ("FHLB Act"), 12 U.S.C. § 1437. Under 5 U.S.C. § 104, an "independent establishment" is defined as "an establishment in the executive branch ... which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment." Thus, the FHLBB clearly is an independent establishment as defined in Title 5.

The Federal Savings and Loan Insurance Corporation ("FSLIC") is "a body corporate" and "an instrumentality of the United States" under § 402(c) of Title IV of the National Housing Act ("NHA"), 12 U.S.C. § 1725(c), and is a "wholly owned Government corporation" under 31 U.S.C. § 9101(3) (Government Corporation Control Act as codified in Title 31 of the U.S. Code). Under 5 U.S.C. § 103, a "Government corporation" is defined as "a corporation owned or controlled by the Government of the United States". Thus, a wholly owned Government corporation under Title 31 is clearly a Government corporation under Title 5.

Exemption from coverage of the Classification Act:

If an agency is an "Executive agency," the only way to escape application of the Classification Act is to fall within one of the exemptions listed in 5 U.S.C. § 5102(b). Section 5103 of Title 5 gives the Office of Personnel Management ("OPM") the authority to determine the applicability of § 5102 to specific positions and employees. Over the years, the FHLBB and the FSLIC have argued that they fell within exemption (25), among others.

Exemption (25) states that the Classification Act does not apply to "positions for which rates of basic pay are individually fixed, or expressly authorized to be fixed, by other statute, at or in excess of the maximum rate for GS-18."

Arguments in support of exemption (25):

The basic pay for the FHLBB's Chairman and Board Members is clearly "individually fixed" by 5 U.S.C. §§ 5314 and 5315 at and in excess of the maximum rate for GS-18, since it is fixed at Level III and Level IV of the Executive Schedule, respectively.

Section 19 of the FHLB Act, 12 U.S.C. § 1439, authorizes the FHLBB to "select, employ, and fix the compensation" of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States." (Emphasis added.) However, "(n)o such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided in the case of members of the Board." In addition, language added in 1935 to § 19 of the FHLB Act, states, as to the FHLBB's employees, that their "employment, compensation, leave, and expenses shall be governed solely by the provisions of this chapter, specific amendments thereof, and rules and regulations of the Board not inconsistent therewith."

Thus, § 19 of the FHLB Act clearly is a statute which "expressly authorizes" the FHLBB to fix the compensation of its officers, employees, attorneys, and agents at or in excess of the maximum rate for GS-18, although the maximum rate authorized by § 19 is that "provided in the case of members of the Board" (Level IV of the Executive Schedule), a rate in excess of the maximum for GS-18. The fact that rates of basic pay are authorized to be fixed at or in excess of the maximum for GS-18 does not necessarily mean that any or all employees' basic pay must be set at that rate. It merely means that the agency has discretion to set basic pay rates at that level if it chooses.

Section 402(c)(5) of Title IV of the National Housing Act ("NHA"), 12 U.S.C. § 1725, contains language similar to that of § 19 of the FHLB Act in that it authorizes the FHLBB to fix the compensation of the FSLIC's officers, employees, attorneys, and agents "without regard to the provisions of any other laws relating to the employment or compensation of officers or employees of the United States."

Some, including the codifiers of the U.S. Code, have taken the position that the "without regard" language of § 19 of the FHLB Act and § 402(c)(5) of Title IV of the National Housing Act is obsolete and superceded because Public Law 880, the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, and Executive Order 8743, April 23, 1941, covered most excepted positions into the competitive civil service and the Classification Act by its own terms (5 U.S.C. § 5102(b)) applies, except as provided in 5 U.S.C. §§ 5102(c) and (d), to "all civilian positions and employees in or under an agency." Therefore, they argue that the "without regard" provisions of § 19 of the FHLB Act and § 402(c)(5) of the NHA are clearly inconsistent with these later provisions.

In addition, it is sometimes argued that the "without regard" provisions of § 19 of the FHLB Act and § 402(c)(5) of Title IV of the NHA were made obsolete and superceded by the Classification Act of 1949 ("1949 Act"), 63 Stat. 954, because a major purpose of the 1949 Act was to include in its coverage positions and agencies which had been excepted from the Classification Act of 1923. Section 201 of the 1949 Act (now codified as 5 U.S.C. § 5102) clearly included the FHLBB and the FSLIC within the definition of "agency" to which the act applied; and §§ 1202 and 1204 of the 1949 Act, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all laws or part of laws inconsistent with the 1949 Act to the extent of such inconsistency.

Nevertheless, Congress has never explicitly repealed the "without regard" provisions of § 19 of the FHLB Act and § 402(c)(5) of Title IV of the NHA. Unlike Title 5 or Title 31, Congress has not adopted the codified version of Title 12. In the absence of express repeal, unless the provisions can be construed to have been repealed by implication, these provisions should govern.

Repeals by implication are not favored, so courts have generally required that the legislative intent to repeal must be clear and manifest. That is not the case here. In addition, neither of the two well-settled categories of repeals by implication apply since (1) the provisions of the two acts and those of Title 5 and its predecessors are not in irreconcilable conflict and (2) the provisions of Title 5 do not necessarily cover the whole subject and clearly act as a substitute for the provisions of the FHLB Act and the NHA. See Posadas v. National City Bank, 296 U.S. 497, at 503.

It should be noted that 5 U.S.C. § 5102(c) contains 27 numbered exemptions, some of which are described in general terms, which Congress added to avoid conflict with existing laws governing the employment and compensation of various classes of Federal employees. Several of these exemptions, including number (25) are consistent with the provisions of § 19 of the FHLB Act and § 402(c) of the Title IV of the NHA. Thus, it is not at all clear that in enacting the 1949 Act or in subsequently codifying Title 5 in 1966 that Congress intended to implicitly repeal § 19 of the FHLB Act and § 402(c) of Title IV of the NHA.

For the above reasons, the FHLBB and the FSLIC should be found to be within the provisions of exemption (25) in 5 U.S.C. § 5102(c) and therefore be exempt from the Classification Act (Chapter 51 of Title 5) and related provisions of Title 5 of the United States Code.

THE UNDER SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

September 24, 1990

Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are the responses to the questions which you submitted to me on September 11, 1990, pursuant to the July 27 hearing on my nomination to the board of the National Cooperative Bank.

If I can be of further assistance, please let me know.

Sincerely,

Constance Horner

Constance Horner
Under Secretary

Enclosures

Q1(a). What types of borrowers should the National Consumer Cooperative Bank serve?

A1(a). The National Consumer Cooperative Bank was chartered to serve as a financial resource to the diversified consumer cooperative business sector. The Act does not preclude NCCB from lending to any particular segment of this market; however, the type of cooperative entity NCCB serves must comply with the eligibility requirements as set forth in Section 105 of the Act.

Q1(b). For example, should the Bank lend to cooperative entities that are able to borrow from commercial banks?

A1(b). There continues to be great demand for NCCB's financial resources from all types of consumer cooperatives. While these cooperative entities have other banking relationships in place for depository services and funding diversification, NCCB remains the lender of choice for many consumer-owned and controlled cooperative businesses. Unlike any other business enterprise, consumer cooperatives seek a stable financial partner that inherently understands their business structure, and provides the highest quality financial service. Frequently, NCCB loans are made in participation with local banks.

Q2. What is a safe and prudent level of capital for the Bank?

A2. Banks subject to the National Banking Act are required to maintain an 8% capital to assets ratio. NCCB doesn't have a specific mandate by law or regulation. The Board of Directors of NCCB assumes that the capital to assets ratio should be twice that expected of a commercial bank. This calls for a 16% capital to assets ratio. The reason for this is that a substantial amount of NCCB's funding is in institutional markets. Without the diversification that a deposit base provides, the higher capital levels are prudent. Currently, NCCB's ratio is in the area of 22%, with "excess" capital of approximately $30 million.

Q3. Do you think there is adequate Federal oversight of the Bank's activities?

A3. NCCB is a regulated institution by virtue of its charter and subsequent acquisition of a state-chartered thrift, NCCB Savings Association in 1987 located in Hillsboro, OH.

NCCB is required to file annual reports with the House and Senate Banking Committees which have general oversight responsibility.

Congress has delegated to the Farm Credit Administration (FCA) responsibility to conduct a review of NCCB's loan portfolio. Similarly Congress has delegated to the Government Accounting Office (GAO) the responsibility of conducting an annual financial examination.

The Federal Home Loan Bank system and the State of Ohio have supervisory authority over the S&L examinations conducted by the state and the Office of Thrift Supervision.

NCCB securities are registered with the Securities and Exchange Commission and, consequently, financial reporting practices are governed by applicable SEC regulations.

NCCB is required to provide certified annual financial statements, prepared in full compliance with general accepted accounting principles.

NCCB also is subject to annual due diligence reviews by its institutional investors.

In light of above the requirements, I do believe NCCB has adequate oversight.

Q4(a). What rate of growth and scope of activities do you advocate for the Bank and its thrift subsidiary?

A4(a). The Bank's rate of growth is controlled by capital adequacy considerations of the financial community and the financial community's evaluation of the Bank's credit quality, profitability and management. It is my understanding from discussions with the Bank that these factors limit growth to prudent, conservative levels. The thrift has grown within limits approved by thrift regulatory officials that are contained in the business plan on file with the Office of Thrift Supervision.

Q4(b). Also, what types of actions should the Bank and its thrift subsidiary take to manage their interest rate risk?

A4(b). The Bank operates under a Board-approved policy that requires absolute minimum exposure to interest rate risk. This policy also applies to the thrift, which also is subject to OTS regulations. To comply with

Board directives, the Bank originates then sells long term, fixed rate mortgage loans and engages in those non-speculative hedging techniques that are commonly utilized to avoid interest rate risk.

Q5. Do you think the Bank should be involved in financing highly leveraged transactions, including leveraged buyouts?

A5. NCCB should not and does not have an interest in financing highly leveraged transactions. Cooperatives do not, by their very nature, typically become involved in HLTs.

NCCB does have three loans that conform to the HLT definition currently in use by regulatory bodies. They involve companies that are majority employee-owned where the ESOP borrowed money to increase its ownership position in the company. As a matter of policy, NCCB does not, however, provide financing when an ESOP is utilized only as a financing technique and control remains with traditional institutional or "takeover" investors.

Officials of NCCB have advised me that as a matter of policy they do not originate or participate in leveraged buyouts except where the party that is in absolute control is the ESOP and the employee-owners.

Q6. What policies do you advocate regarding the Bank's directors avoidance of conflicts of interest?

A6. I would advocate continued compliance with the Conflict of Interest Policy currently in place. This policy was recently reviewed and revised, as appropriate, by the Board of Directors in compliance with the new issuance of Executive Order 12674 in 1989.

As indicated in the Policy, the Board recognizes that many relationships and transactions will arise in which an employee, board member, relative or associated organization will be presented with multiple, potentially conflicting roles as regards Bank business.

The Board of Directors of NCCB has an obligation under the NCCB Act to adopt and publish its own Conflict of Interest Policy which shall be "no less stringent in effect" than the provisions of Executive Order No. 12674 is to Federal employees. The Board also realizes, however, that many of the prohibitions properly applicable to Federal employees can and should be modified to reflect commercial reality so as not to

render employment by the Bank or membership on the Board such onerous obligations as to deter highly competent persons from seeking those positions.

The current policy requires complete disclosure of all financial interests and business relationships by anyone in a responsible position with the Bank and as may be necessary by any individual or organization seeking to transact business with the Bank.

I have reviewed NCCB's Conflict of Interest Policy and believe it is adequate policy.

Q7. When you were at OPM, which staff members recommended to you that Federal Home Loan Bank Board Chairman Gray's request for an exemption from the Classification Act be denied?

A7. Attached is a copy of the internal OPM memoranda prepared in 1986 recommending the decision made to deny the FHLBB request. It is signed by James Morrison, Associate Director for Compensation. In addition, the attached OPM Internal Review Form (OPM Form 1480) shows staff clearances made prior to its receiving my review and decision.

Q8. When you were at OMB, which staff members recommended to you that Chairman Gray's request for additional staff be denied?

A8. I have attached 1983, 1984, and 1985 staff assignments, as set forth in the OMB staff directories for those years. I have circled the names of examiners who may have handled the FHLBB accounts. At this date, I am not absolutely certain, and account assignments could vary from time to time. Any staff member in the chain of command, from the assigned examiner to the branch chief and deputy associate director, as well as, conceivably, staff in the offices of management, economic policy, and general counsel could have offered advice and recommendations.

Q9. When you were at OMB, which staff members accompanied you to any of your meetings with Chairman Gray at which you discussed possible new examination and/or supervisory positions?

A9. It's impossible to say at this date which, if any, staff joined me in discussions with Chairman Gray. I remember only two meetings and I believe OMB staff was present at neither of those meetings. If there was any other meeting, any staff from Bank Board examiner to

branch chief and deputy associate director could have attended. Depending on the issue, legal, management, and economic policy staff could have attended as well.

Q10. Do you have any additional documents, or does OPM or OMB have any additional documents, regarding your meetings with Chairman Gray, his requests for additional examination and/or supervisory positions, or his request for an exemption from the Classification Act, such as correspondence, meeting minutes, or internal memoranda from staff presenting the issues or analysis?

A10. I have attached three documents OPM has provided regarding Chairman Gray's request for an exemption from the Classification Act: 1) Chairman Gray's letter to me requesting an exemption; 2) an internal staff memo conveying the conclusion that there was no legal basis for an exemption and recommending its denial; and 3) my letter to Chairman Gray denying an exemption. I have no other documents of the kind this question identifies relating to the Classification Act. Unlike the OPM-related issue, which was a single, discrete decision, the OMB-related issue -- examination and supervisory position levels -- extended over the years of my tenure there (part of 1983, all of 1984, and part of 1985). That is, documents would have been generated for each budget cycle. There may have been additional inter-cycle documents. It is my understanding that release of such documents would be considered upon a request directly to OMB from the Committee.

Q11(a). In your testimony, you stated that you were following a Presidential policy that the size of the federal workforce should not be increased. How was that policy communicated to you?

A11(a). This policy was communicated, as is customary, through both external and internal means; that is, it was communicated publicly through Presidential speeches, interviews, etc. and internally, through guidance from the President's policy advisors and appointed officials to whom he gave guidance.

Q11(b). Did you ever discuss the FHLBB's request for additional staff or exemptions with your superiors at either OMB or OPM?

A11(b). It is likely that I discussed the FHLBB's request for additional staff with superiors at OMB. As director, I had no superior at OPM, as I reported to the President.

Jan 83

Economics and Government

		EXT	RM	BLDG
Associate Director	Constance J. Horner	(395)5044	262	OEOB
Secretary	Rosemary A. Rowland	(395)5044	262	OEOB

Transportation, Commerce and Housing Division

		EXT	RM	BLDG
Deputy Associate Director	Joyce J. Walker	(395)4892	9202	NEOB
Secretary	Brenda Lockhart	(395)4892	9202	NEOB
Secretary	Judith Freeman	(395)3451	9202	NEOB
	Carol S. Ballew	(395)3451	9202	NEOB
Deputy Chief, Transportation, Commerce and Housing and Chief, Housing Branch	Kenneth F. Ryder	(395)4610	9220	NEOB
Secretary	Darlene Hall	(395)4610	9220	NEOB
Secretary	Patricia Southerland	(395)4610	9220	NEOB
	Barry Anderson	(395)4610	9220	NEOB
	Julia A. Gould	(395)4610	9220	NEOB
	John K. Mathewson	(395)4610	9220	NEOB
	Alan Rhinesmith	(395)4610	9220	NEOB
	Paul Weech	(395)4610	9220	NEOB
	Barry R. Wides	(395)4610	9220	NEOB
Chief, Commerce Branch	John R. Dyer	(395)3914	9217	NEOB
Secretary	Charlotte D. Waggy	(395)3914	9217	NEOB
Secretary	Hazel Briggs	(395)3914	9217	NEOB
	Thomas J. Elzey	(395)3914	9217	NEOB
	James J. Jukes	(395)3914	9217	NEOB
	Jules Lichtenstein	(395)3914	9217	NEOB
	Kate Newman	(395)3914	9217	NEOB
	Vivian Rivera	(395)3914	9217	NEOB
Chief, Transportation Branch	Kenneth L. Schwartz	(395)5704	9208	NEOB
Secretary	Dorothy S. Andrews	(395)5704	9208	NEOB
Secretary	Carole D. Spriggs	(395)5704	9208	NEOB
	Nicholas S. Stoer	(395)5704	9208	NEOB
	Geary R. Andrews	(395)5704	9208	NEOB
	Frank DeRosa	(395)5704	9208	NEOB
	Penny Jacobs	(395)5704	9208	NEOB
	Leslie Keenan	(395)5704	9208	NEOB
	Nancy Potok	(395)5704	9208	NEOB
	Janet Rice	(395)5704	9208	NEOB

Justice, Treasury and Personnel Division

		EXT	RM	BLDG
Deputy Associate Director	Roger S. Adkins	(395)3100	9235	NEOB
Secretary	Dee Shore	(395)3100	9235	NEOB
Secretary	Robin Fabrega	(395)3100	9235	NEOB
Assistant	Anna Dixon	(395)3100	9235	NEOB

Dec 1983

Economics and Government

		EXT	RM	BLDG
Associate Director	Constance J. Horner	(395)5044	262	OEOB
Secretary	Rosemary A. Rowland	(395)5044	262	OEOB

Transportation, Commerce and Housing Division

		EXT	RM	BLDG
Deputy Associate Director	Joyce J. Walker	(395)4892	9202	NEOB
Secretary	Patricia J. Watson	(395)4892	9202	NEOB
Secretary	Judith Freeman	(395)3451	9202	NEOB
	Carol S. Ballew	(395)3451	9202	NEOB
Deputy Chief, Transportation, Commerce and Housing and Chief, Housing Branch	Kenneth F. Ryder	(395)4610	9220	NEOB
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Secretary	Patricia Southerland	(395)4610	9220	NEOB
	Barry Anderson	(395)4610	9220	NEOB
	John R. Mathewson	(395)4610	9220	NEOB
	Alan Rhinesmith	(395)4610	9220	NEOB
	Susan Tanaka	(395)4610	9220	NEOB
	Paul Weech	(395)4610	9220	NEOB
	Barry R. Wides	(395)4610	9220	NEOB
Chief, Commerce Branch	John R. Dyer	(395)3914	9217	NEOB
Secretary	Charlotte D. Waggy	(395)3914	9217	NEOB
Secretary	Janice G. Oldridge	(395)3914	9217	NEOB
	Thomas J. Elzey	(395)3914	9217	NEOB
	Scott B. Gudes	(395)3914	9217	NEOB
	James J. Jukes	(395)3914	9217	NEOB
	Kate Newman	(395)3914	9217	NEOB
	Carol L. Weatherly	(395)3914	9217	NEOB
Chief, Transportation Branch	Kenneth L. Schwartz	(395)5704	9208	NEOB
Secretary	Dorothy S. Andrews	(395)5704	9208	NEOB
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	Nicholas S. Stoer	(395)5704	9208	NEOB
	Geary R. Andrews	(395)5704	9208	NEOB
	Frank DeRosa	(395)5704	9208	NEOB
	William J. Hughes	(395)5704	9208	NEOB
	Penny Jacobs	(395)5704	9208	NEOB
	Nancy Potok	(395)5704	9208	NEOB
	Janet Rice	(395)5704	9208	NEOB

Justice, Treasury and Personnel Division

		EXT	RM	BLDG
Deputy Associate Director	Roger S. Adkins	(395)3100	9235	NEOB
Secretary	Connie Hooper	(395)3100	9235	NEOB
Assistant	Anna Dixon	(395)3100	9235	NEOB

June 85

Economics and Government

		EXT	RM	BLDG
Associate Director	Constance Horner	(395)5044	262	OEOB
Secretary	Rosemary Rowland	(395)5044	262	OEOB

Transportation, Commerce and Housing Division

		EXT	RM	BLDG
Deputy Associate Director	Joyce J. Walker	(395)4892	9202	NEOB
Secretary	Patricia J. Watson	(395)4892	9202	NEOB
Secretary	Vacant	(395)3451	9202	NEOB
	Carol S. Ballew	(395)3451	9202	NEOB
Acting Chief, Housing Branch	Alan Rhinesmith	(395)4610	9220	NEOB
Secretary	Darlene Hall	(395)4610	9220	NEOB
Secretary	Patricia Southerland	(395)4610	9220	NEOB
	Barry Anderson	(395)4610	9220	NEOB
	John R. Mathewson	(395)4610	9220	NEOB
	Susan Tanaka	(395)4610	9220	NEOB
	Paul Weech	(395)4610	9220	NEOB
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Chief, Commerce Branch	John R. Dyer	(395)3914	9217	NEOB
Secretary	Charlotte D. Waggy	(395)3914	9217	NEOB
Secretary	Janice G. Oldridge	(395)3914	9217	NEOB
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Secretary	Carol F. Spriggs	(395)5704	9208	NEOB
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	Geary R. Andrews	(395)5704	9208	NEOB
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Secretary	Connie Hooper	(395)3100	9235	NEOB
Assistant	Anna Dixon	(395)3100	9235	NEOB

Fall 1984

ALPHABETICAL INDEX OF AGENCIES WITH STAFF ASSIGNMENTS

ACTION	Thomas K. Morgan	LVE	3262
Administrative Conference of the United States	Karen Wilson	JTP	6156
Advisory Commission on Intergovernmental Relations	Sarah Ducich	LVE	4500
Advisory Committee on Federal Pay	Curt Smith	JTP	6156
Advisory Council on Historic Preservation	Steven E. Satterfield	NR	4993
Agency for International Development	Michael Usnick	IA	4594
Aging, Administration on	Ashley Files	HIM	4926
Agricultural Marketing Service (Agriculture)	Carol Dennis	NR	3446
Agricultural Stabilization and Conservation Service			
(Salaries & Expenses)	Dennis I. Dickstein	NR	4762
(Agriculture)	Fitzhugh Thomas	NR	3446
(Conservations Programs)			
Agriculture, Department of			
(General)	Ronald Landis	NR	4763
(Food & Nutrition Service)	Richard Stavneak	NR	4686
	Susan Quantius	NR	4686
Aid to Families with Dependent Children	Scott A. Elliff	HIM	4686
	Sara Brentlinger	HIM	4686
Air Force, Department of the	Allan V. Burman	NS	3554
(see Defense Department)			
Alcohol, Drug Abuse, and Mental Health Administration	Jon Glaudemans	HIM	4926
National Institute of Mental Health	Jon Glaudemans	HIM	4926
National Institute on Alcohol Abuse and Alcoholism	Jon Glaudemans	HIM	4926
National Institute on Drug Abuse	Jon Glaudemans	HIM	4926
Saint Elizabeths Hospital	Jon Glaudemans	HIM	4926
American Battle Monuments Commission	Stephen Simon	NS	3712
American Printing House for the Blind (ED)	Fred Fischer	LVE	5880
Architectural and Transportation Barriers Compliance Board	James Ricciuti	LVE	5880
AMTRAK	Nancy Potok	TCH	5704
Animal and Plant Health Inspection Service (Agriculture)	Dale Didion	NR	3446
Appalachian Regional Commission	William Hughes	TCH	5704
Arms Control and Disarmament Agency, U.S.	Jeffrey H. Ashford	IA	3920
Army, Department of the	Franz W. Kretzmann	NS	4530

ALPHABETICAL INDEX OF AGENCIES WITH STAFF ASSIGNMENTS

Federal Deposit Insurance Corporation	Javier Gonzalez	TCH	4610
Federal Election Commission	Carol Gorski	LVE	3971
Federal Emergency Management Agency	Jim Jordon	JTP	5090
Federal Financing Bank (Treasury)	Scott Cleland	JTP	5090
Federal Grain Inspection Service	Carol Dennis	NR	3446
Federal Highway Administration	Katherine Collins	TCH	5704
Federal Home Loan Bank Board	Javier Gonzalez	TCH	4610
Federal Home Loan Mortgage Corp.	~~Harry Wides~~	TCH	4610
Federal Housing Administration (HUD)	Geary Andrews	TCH	4610
Federal Labor Relations Authority	Elaine Rideout	JTP	6156
Federal Maritime Commission	Janet Rice	TCH	5704
Federal Mediation and Conciliation Service	Susan Tibbitts	LVE	3262
Federal Mine Safety and Health Review Commission	Susan Tibbitts	LVE	3262
Federal Prison Industries, Inc. (Justice)	Tara Treacy	JTP	6156
Federal Property Resource Service (GSA)	Mary Ann Chaffee	JTP	5090
Federal Railroad Administration	Nancy Potok	TCH	5704
Federal Reserve Board	John Mitrisin	JTP	5090
Federal Savings and Loan Insurance Corp.	Javier Gonzalez	TCH	4610
Federal Supply Service (GSA)	Mary Ann Chaffee	JTP	5090
Federal Trade Commission	Karen Wilson	JTP	6156
Fine Arts, Commission on	Jeanette Gordon	NR	3750
Fish and Wildlife Service (Interior)	David Allen	NR	4993
Fogarty, John E. International Center for Advanced Study in the Health Sciences	Jon Glaudemans	HIM	4926
Food and Drug Administration (HHS)	Richard Jacob	HIM	4926
National Center for Food Safety and Applied Nutrition	Richard Jacob	HIM	4926
National Center for Veterinary Medicine	Richard Jacob	HIM	4926
National Center for Drugs and Biologies	Richard Jacob	HIM	4926
National Center for Radiological Health and Medical Devices	Richard Jacob	HIM	4926
National Center for Toxicological Research	Richard Jacob	HIM	4926
Food and Nutrition Service (USDA)	Richard Stavneak	HIM	4686
	Susan Quantius	HIM	4686
Error Rates	Michael Dost	HIM	4922
Food Safety and Inspection Service (Agriculture)	Andrea Hoffman	NR	4762

CONSTANCE HORNER

Under Secretary of Health and Human Services

Since May 1989, Constance Horner has served as the under secretary of health and human services. In the number two position in the department, Mrs. Horner assists Secretary Louis W. Sullivan, M.D., in managing the federal agency with the fourth largest budget in the world and over 120,000 employees. Exceeded only by the budgets of the United States, the Soviet Union and Japan, HHS is responsible for wide-ranging programs vital to the well-being of American citizens. Among its components are the National Institutes of Health, the Food and Drug Administration, the Social Security Administration, the Public Health Service, the Health Care Financing Administration (which administers Medicare and Medicaid) and the Family Support Administration (which administers Aid to Families with Dependent Children).

At the direction of Secretary Sullivan, Mrs. Horner is conducting a comprehensive review of health and long-term care financing policies to determine fundamental reforms needed to improve access to care for those disadvantaged by current policies. She is also examining ways to make the current Medicaid program more equitable and more attractive to potential providers and, in general, to create a partnership between government at all levels and the private sector to strengthen the American health care financing and delivery systems.

Prior to this appointment, Under Secretary Horner served as director of the U.S. Office of Personnel Management, formerly the Civil Service Commission, with responsibility for recruiting, training and developing a workforce of more than 2 million federal employees and administering their pay, pension and health benefits systems.

Other government appointments in which she has served include associate director for economics and government in the Office of Management and Budget; director of VISTA and acting associate director of ACTION, VISTA's parent agency; and deputy assistant director of ACTION for policy and planning. She has also served on the President's Commission on White House Fellowships and the President's Commission on Executive Exchange.

Mrs. Horner is a fellow of the National Academy of Public Administration and an associate trustee of the University of Pennsylvania. She was elected to membership in the Cosmos Club and was selected by the Jaycees as a 1988 Healthy American Leader Awardee.

A native of New Jersey, Mrs. Horner is a graduate of the University of Pennsylvania and holds a Master of Arts degree in English Literature from the University of Chicago. She has lectured at many of the nation's top public policy and business schools on policy development and management within the federal government. She has contributed articles on public policy for the Wall Street Journal, New York Times, and other publications. She has also taught at secondary schools in the United States and at universities abroad.

January 3, 1990

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: HORNER (LAST) CONSTANCE (FIRST) J. (OTHER)

Position to which nominated: Member, Board of Directors, National Cooperative Bank

Date of nomination: June 8, 1990

Date of birth: 24 (DAY) 02 (MONTH) 42 (YEAR) Place of birth: Summit, New Jersey

Marital status: Married Full name of spouse: Charles Edward Horner

Name and ages of children: David Bayer Horner 21

Jonathan Purcell Horner 15

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Chatham High School	9/57 - 6/60	HS Diploma	6/60
University of Pennsylvania	9/60- 5/64	BA	5/64
University of Chicago	9/66- 5/67	MA	5/67

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

University of Pennsylvania Benjamin Franklin Scholarship

Fellow, National Academy of Public Administration

U.S. Jaycees 1988 Healthy American Leader Awardee

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Fellow, National Academy of Public Administration		
Associate Trustee, University of Pennsylvania		
Executive Women in Government		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

Under Secretary, Department of Health and Human Services, 8/89 to Present

Director, U.S. Office of Personnel Management, Washington, D.C., 8/85-5/89

Associate Director for Economics and Government, Office of Management and Budget, Washington, D.C., 8/83-8/85
Acting Assoc. Director for Domestic and Antipoverty Operations, Deputy Assoc. Director for VISTA and Service-Learning, Deputy Asst. Director for Policy Planning and Evaluation, ACTION Agency, Washington, D.C., 3/81-5/83

Transition Team, Department of Education, Washington, D.C., 11/80-1/81

Policy Coordination and Research, Reagan-Bush Committee, Arlington, VA, 8/80-11/80

Policy Development and Research, George Bush for President Committee, Alexandria, VA, 1/80-5/80
Free-Lance Writer, Washington, D.C., 6/77-1/80

English Teacher, Georgetown Day High School, Washington, D.C., 9/72-6/77

English Teacher, University of Maryland Extension Division, Taiwan Normal University and Taiwan Political Science University, Taipei, Taiwan, 6/67-6/68

English Teacher, Oak Park-River Forest High School, Oak Park, IL, 9/65-6/66

English Teacher, East Islip High School, Islip Terrace, NY, 9/64-6/65

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Acting Assoc. Director for Domestic and Antipoverty Operations, Deputy Assoc. Director for VISTA and Service-Learning, Deputy Asst. Director for Policy Planning and Evaluation, ACTION Agency, 3/81-5/83

Associate Director for Economics and Government, Office of Management and Budget, Washington, D.C., 5/83-8/85
Director, U.S. Office of Personnel Management, Washington, D.C., 8/85-5/89

Under Secretary, Department of Health and Human Services, Washington, D.C. 5/89 to present

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See Attached Listing.

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Registered Republican.

Volunteer: Reagan-Bush Committee, Arlington, VA 8/80-11/80

Volunteer: George Bush for President Committee, Alexandria, VA 1/80-5/80

12. Published Writings:

"Paid Parenthood: Cui Bono?" The American Spectator, 1/78.

"The Family: Next Ideological Battleground?" The Journal of the Institution for Socioeconomic Studies, Winter, 1978.

"Debunking the Educational Debunkers," The Wall Street Journal, 6/23/78.

"The Revisionists Revised A Critique of the Radical Attack on the Schools," The Journal of the Institution for Socioeconomic Studies, Autumn, 1978.

"Women's Proper Place: A History of Changing Ideals and Practices, 1870 to the Present," The American Spectator, 3/79.

"Education by Choice: the Case for Family Control," The Journal of the Institute for Socioeconomics Studies, Autumn, 1979.

"Schools in a Society 'Overdosing on Change'," The Wall Street Journal, 9/5/79.

"Is the New Sex Education Going Too Far?" The New York Times Magazine, 12/7/80.

"Can Wall Street Afford Uncle Sam, Investor?," The Wall Street Journal, 12/12/85.

"A Message From the Director of America's Civil Service," ACTION - the Professional News Magazine of the Senior Executive Association, April/May 1986

"Reforming the Civil Service," NAGC Journal of Public Communications, Undated (Published Remarked from the Town Hall Meeting in Los Angeles, California, April 29, 1986).

"Leave the Hatch Act Alone," Washington Post, 11/15/87.

"Civil Service Reform Act: A Review and Assessment," Journal of the Federal Managers Association, July 1988 (Published Remarks from the Civil Service Reform Act 10th Anniversary Review and Assessment Conference in Washington, D.C., May 18, 1989).

"Beyond Mr. Gradgrind," Policy Review, Spring 1988.

"Merit-Based Pay Among Government Changes," Engineering Horizons, 1988.

"Unity from Diversity," The Bureaucrat, Winter 1988-89 (Published Excerpts from remarks at the Federal Executive Institute in Charlottesville, VA, October 14, 1988).

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

1988, $750, Ted Blanton for Congress

1988, $500, Alan Keyes for Senate

Qualifications: State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Non applicable

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Non applicable

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

I believe my qualifications to serve as a member of the Board of Directors of the National Cooperative Bank fall into two categories -- one general and one specific.

The first, more general qualification entails the translation of experienced-based expertise with the public policy and economic aspects of government to the realm of a governmentally-chartered, but private entity. As Director of VISTA, I learned through Federally-supported volunteer programs about the value of cooperative undertakings to economic development, especially rural economic development. As Associate Director for Economics and Government of the U.S. Office of Management and Budget, I became familiar with the issues surrounding government-sponsored or public-purpose enterprises. As Director of the U.S. Office of Personnel Management, I was responsible for the direction of over two million Federal employees. That experience provided an education in management which I believe strengthens my ability to make sound judgments about the management of a range of enterprises.

More specifically, the Bank provides financial services to urban and rural community-based health clinics, to health maintenance organizations, and to other cooperative health enterprises. Because of my responsibilities as Under Secretary of the Department of Health and Human Services, I am acquainted with the public and financial environment within which American health care is provided. I am confident this expertise will permit me to make a valuable contribution to the Board of Directors of the Bank in its role of providing oversight of and direction to the Bank in meeting its dual responsibilities of sound and prudent management of risk and of strengthening the financing mechanisms of private enterprises, as represented by the Bank and its Development Corporation.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Non applicable

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

In 1983 an EEO complaint was filed by Lillian B. McGill, a State office employee of the ACTION agency. As a second line supervisor, I was included among those named in the complaint. The case was settled by the ACTION agency in 1988, with Ms. McGill receiving a cash settlement, plus attorney's fees with no admission of liability. Records are held by the ACTION agency.

As Director of the U.S. Office of Personnel Management, I was named in my official capacity as defendant in various lawsuits. In addition, on occasion, I was sued in an individual capacity because of my OPM position. Records of this litigation and its results are held by OPM's General Counsel.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None